

Exhibit 37

Deposition of Robert Topel
(December 6, 2017) (excerpted)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON)	
FITCH, on behalf of)	
themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:15-cv-01045-RFB-(PAL)
)	
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	
)	
Defendant.)	
_____)	

HIGHLY CONFIDENTIAL

CONTINUED VIDEOTAPED DEPOSITION OF

ROBERT TOPEL, VOL. II

Washington, D.C.

December 6, 2017

8:39 a.m.

REPORTED BY:
Tina Alfaro, RPR, CRR, RMR
Job No. 52570

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">292</p> <p>1 So they'd have to be -- there would be competition 2 for this exclusive upfront, but information is not 3 fully played out yet on who's who. So I doubt 4 that -- I doubt that fighters would want to sign 5 that contract. So you -- you have a hypothetical 6 contract there. Zuffa's not going to get any 7 fighters with that contract.</p> <p>8 Q. So in your view it's -- is it your view -- 9 I'm just trying to understand. Is your view that 10 it's anticompetitive because no one could sign it 11 or that it's anticompetitive for other reasons or 12 both?</p> <p>13 A. Well, you asked me --</p> <p>14 MR. WIDNELL: Objection, form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. Technically speaking, you asked me if it 17 was procompetitive, so like it was efficient, 18 right?</p> <p>19 Q. Yes.</p> <p>20 A. Well, it's not going to be an efficient 21 contract if fighters come along and say I'm not 22 signing that and they go somewhere else. A 23 procompetitive contract is one that maximizes, 24 loosely speaking, the value of output, and there's 25 not going to be out -- well, Zuffa's not going to</p>	<p style="text-align: right;">294</p> <p>1 promotion than it does under its existing 2 contracts?</p> <p>3 A. Well, under its existing contracts they 4 might lose people who move. In that sense -- in 5 that sense only that would be one effect, but 6 you've also posited a world where everybody wants 7 to fight for Zuffa anyway. So maybe they don't 8 have to promote so much because everybody wants 9 to -- wants to watch Zuffa anyway.</p> <p>10 Q. Turn to paragraph 95 and 96 -- or turn to 11 95 first, please.</p> <p>12 A. Okay. We're back in my report, right?</p> <p>13 Q. We are.</p> <p>14 A. Yeah.</p> <p>15 Q. In paragraphs 95 and 96 you're talking 16 about --</p> <p>17 A. I'm sorry. I'm on page 95.</p> <p>18 Q. Page 41.</p> <p>19 A. Yes.</p> <p>20 Q. There you're talking about co-promoted 21 matches. What are copromoted matches?</p> <p>22 A. Where two promoters, say Bellator and 23 Zuffa, say let's have a match that mixes your guys 24 and our guys.</p> <p>25 Q. And you say there in the first sentence of</p>
<p style="text-align: right;">293</p> <p>1 participate in the output if they offer that 2 contract. Somebody else would because they 3 wouldn't be offering that contract.</p> <p>4 Q. Assume for the question that fighters so 5 much wanted to fight for the UFC because the UFC 6 currently has most of the top fighters that they 7 were willing to make that deal going in. Would it 8 then be procompetitive?</p> <p>9 MR. WIDNELL: Objection, form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Well, you know, I don't know because now 12 you're telling me that other people can offer 13 similar contracts. Other people can offer any 14 contract they want and implausibly Zuffa offers 15 this contract that says you're going to fight for 16 us forever and I don't know all the other forms of 17 the contract that you're talking about and 18 everybody lines up with Zuffa, then, I mean, one 19 could imagine that that has some value-producing -- 20 you know, salubrious value-producing consequence 21 that makes everybody want to go there, but I don't 22 know what it is. So I've not had to consider that 23 in the context of this matter.</p> <p>24 Q. Would you agree that under that contract 25 Zuffa would have more incentive to invest in</p>	<p style="text-align: right;">295</p> <p>1 paragraph 95 towards the end that copromoted 2 matches are apparently nonexistent; do you see 3 that?</p> <p>4 A. I recall the sentence. I'm looking for 5 the -- it's towards the end.</p> <p>6 Q. Of the first sentence.</p> <p>7 A. Oh, the first sentence?</p> <p>8 Q. I'm sorry. The second sentence.</p> <p>9 A. Yes.</p> <p>10 Q. You understand that the UFC --</p> <p>11 MR. WIDNELL: Objection, misstates, but go 12 ahead.</p> <p>13 BY MR. CRAMER:</p> <p>14 Q. The second sentence says "Copromoted 15 matches in which athletes from different MMA 16 promoters compete against one another are 17 apparently nonexistent." Did I read that 18 correctly?</p> <p>19 MR. WIDNELL: I'm sorry. I'm not -- 20 you're in paragraph 95?</p> <p>21 MR. CRAMER: Yes, second sentence.</p> <p>22 MR. WIDNELL: I apologize. Yes. I see. 23 I was looking at a different sentence. My 24 mistake.</p> <p>25 BY THE WITNESS:</p>

8 (Pages 292 to 295)

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">296</p> <p>1 A. We're all on the same page.</p> <p>2 Q. All right. I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. You understand that UFC refuses to</p> <p>5 copromote with other MMA promoters, correct?</p> <p>6 MR. WIDNELL: Objection, form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Whether that's a binding policy or not I</p> <p>9 don't know. I just know that they don't.</p> <p>10 Q. Have you seen evidence in the record where</p> <p>11 Dana White has said he will not copromote with</p> <p>12 other promoters?</p> <p>13 A. I don't recall that statement. I wouldn't</p> <p>14 be surprised that it's made.</p> <p>15 Q. Are you aware that other MMA promotions</p> <p>16 haven't engaged in co-promotion?</p> <p>17 MR. WIDNELL: Objection, form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. Could you read -- I think you --</p> <p>20 Q. I'll restate the question.</p> <p>21 A. I think you said haven't when you probably</p> <p>22 meant have.</p> <p>23 Q. Thank you. Are you aware that other MMA</p> <p>24 promotions have indeed engaged in co-promotion?</p> <p>25 MR. WIDNELL: Objection, form.</p>	<p style="text-align: right;">298</p> <p>1 in copromotion, correct?</p> <p>2 A. With whom?</p> <p>3 Q. Does Zuffa have market power in the boxing</p> <p>4 promotion world?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. And would you agree that if Zuffa engaged</p> <p>7 in copromotion in boxing in a market in which it</p> <p>8 does not have market power that that would be</p> <p>9 efficient?</p> <p>10 A. Well, you have to define copromotion</p> <p>11 now.</p> <p>12 Q. Promoting a bout with a fighter signed by</p> <p>13 the UFC against a fighter that wasn't signed by the</p> <p>14 UFC.</p> <p>15 A. Are we -- are we talking about Conor</p> <p>16 McGregor and his fight with -- what's his name?</p> <p>17 Merryweather Lewis?</p> <p>18 Q. Money Mayweather.</p> <p>19 A. Yeah. Okay. All right. So that's what</p> <p>20 we're talking about? Is that what we're talking</p> <p>21 about, that's the question.</p> <p>22 Q. Yes.</p> <p>23 A. Okay.</p> <p>24 Q. You're aware that Zuffa copromoted a</p> <p>25 boxing match between its own fighter, Conor</p>
<p style="text-align: right;">297</p> <p>1 BY THE WITNESS:</p> <p>2 A. You said -- could you read -- I think</p> <p>3 you --</p> <p>4 Q. I'll restate the question.</p> <p>5 A. I think you said haven't when you probably</p> <p>6 meant have.</p> <p>7 Q. Thank you. Are you aware that other MMA</p> <p>8 promotions have indeed engaged in procopromotion?</p> <p>9 A. You know, I recall that there are a few</p> <p>10 instances of copromotion and I can't remember what</p> <p>11 they -- I can't remember the context or who did</p> <p>12 it.</p> <p>13 Q. Are you aware that Pride used to do bouts</p> <p>14 with fighters from different MMA promotions before</p> <p>15 it was bought up by Zuffa?</p> <p>16 A. I don't recall what Pride did.</p> <p>17 Q. Are you aware that Strike Force before it</p> <p>18 was bought by Zuffa used to allow some of its</p> <p>19 fighters to go fight with other promotions?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. That's a different thing.</p> <p>23 Q. Are you aware of that?</p> <p>24 A. Yeah.</p> <p>25 Q. And you know that Zuffa recently engaged</p>	<p style="text-align: right;">299</p> <p>1 McGregor, and Mayweather?</p> <p>2 MR. WIDNELL: Objection, foundation.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I'm not sure that it was copromotion in</p> <p>5 the sense that we've been talking about here, but</p> <p>6 I'm aware that Conor McGregor fought in that match</p> <p>7 and it was okay with UFC for him to do it.</p> <p>8 Q. The UFC promoted that match, correct?</p> <p>9 MR. WIDNELL: Objection, foundation.</p> <p>10 BY THE WITNESS:</p> <p>11 A. When you say promoted, promote means that</p> <p>12 they advertise the existence of the match going on</p> <p>13 and that Conor McGregor is a UFC athlete and he's</p> <p>14 fighting in this match or that they put the match</p> <p>15 on?</p> <p>16 Q. The former.</p> <p>17 A. Yeah, I'm aware they did that.</p> <p>18 Q. And you're aware that Mayweather is not</p> <p>19 under contract with the UFC, correct?</p> <p>20 A. Of course, yes.</p> <p>21 Q. And you would agree -- strike that.</p> <p>22 Have you done an analysis in your</p> <p>23 report -- strike that.</p> <p>24 Do you know whether the UFC intends to</p> <p>25 copromote in the sense that it copromoted the match</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">300</p> <p>1 between McGregor and Mayweather in boxing -- other</p> <p>2 boxing matches in the future?</p> <p>3 A. It would depend on whether it's in the,</p> <p>4 you know, management of UFC judges that it's in</p> <p>5 their business interest and whether someone comes</p> <p>6 along who's got the talents to compete at that</p> <p>7 level and whether they want to risk it.</p> <p>8 Q. And you understand that the fight between</p> <p>9 Mayweather and McGregor was profitable, correct?</p> <p>10 A. One assumes for the promoter of that</p> <p>11 fight.</p> <p>12 Q. And for the fighters, correct?</p> <p>13 A. One assumes.</p> <p>14 Q. All right. Back to Strike Force data.</p> <p>15 You testified yesterday relating to the Chow test</p> <p>16 and I have some follow-up questions.</p> <p>17 A. Okay.</p> <p>18 Q. You testified that when you ran your Chow</p> <p>19 test that Zuffa and Strike Force data did not come</p> <p>20 from the identical data-generating process,</p> <p>21 correct?</p> <p>22 A. I recall saying something like that, yeah.</p> <p>23 Q. And you testified that your Chow test</p> <p>24 could tell you if there was any reason to put these</p> <p>25 guys, the Strike Force guys in your words, in the</p>	<p style="text-align: right;">302</p> <p>1 It's not managed by Zuffa people, the contracts</p> <p>2 were not written by Zuffa people, nothing. They</p> <p>3 say we're going to put them in with Zuffa and say</p> <p>4 this -- and we're going to calculate the damages</p> <p>5 for -- for Zuffa fighters using those guys. And so</p> <p>6 you say, well, you know, did they have the same</p> <p>7 data-generating process? Answer, no, but the first</p> <p>8 premise is why are those people in there in the</p> <p>9 first place. And then the Chow test or the F test</p> <p>10 says, you know, it actually was a different world</p> <p>11 over there for those -- for those fighters. So</p> <p>12 you're using the parameters that are affected by a</p> <p>13 firm that doesn't -- that wasn't owned by Zuffa</p> <p>14 to -- to construct these parameters to predict some</p> <p>15 so-called damage. It's a different company.</p> <p>16 Q. You've heard of the term "yardstick,"</p> <p>17 right?</p> <p>18 A. Yeah.</p> <p>19 Q. You testified I think earlier this morning</p> <p>20 that the contracts at other MMA promotions look</p> <p>21 very much like the contracts at Zuffa, right?</p> <p>22 A. The contracts look like them.</p> <p>23 Q. And you inferred from the fact that the</p> <p>24 contracts at other MMA promotions are similar to</p> <p>25 the contracts at Zuffa that the business practices</p>
<p style="text-align: right;">301</p> <p>1 regression, correct?</p> <p>2 A. I don't know if -- I would never have</p> <p>3 phrased it that way, but --</p> <p>4 Q. I'm quoting you.</p> <p>5 A. I don't remember saying it that way, but</p> <p>6 go ahead.</p> <p>7 Q. So your testimony is that your Chow test</p> <p>8 can tell you whether to include some observations</p> <p>9 in regression -- in a regression but not others?</p> <p>10 A. No. No. The preacquisition Strike Force</p> <p>11 data -- think about what Dr. Singer's regression</p> <p>12 for all its flaws is -- is doing. It's -- it's</p> <p>13 saying that given the business model and</p> <p>14 compensation model that Zuffa runs that there's</p> <p>15 this relationship between the so-called foreclosure</p> <p>16 share however calculated and the share of a</p> <p>17 particular athlete's pay in the event in which he</p> <p>18 or she competes, and that's specific to the way</p> <p>19 Zuffa runs its business. And then -- fine, you</p> <p>20 want to run that regression, run that regression on</p> <p>21 Zuffa. And then somebody comes along and</p> <p>22 effectively says, hey, we found this box of data</p> <p>23 that fell off the back of a truck and it's got</p> <p>24 some -- it's got some MMA fighter data in it from a</p> <p>25 different company that's operating independently.</p>	<p style="text-align: right;">303</p> <p>1 would be similar this morning, correct?</p> <p>2 A. Sure, they're similar. The business</p> <p>3 practices are similar.</p> <p>4 Q. All right. You believe that your Chow</p> <p>5 test justifies the discarding of the Strike Force</p> <p>6 data unless the data-generating process for Strike</p> <p>7 Force is identical to the data-generating process</p> <p>8 for Zuffa; is that right?</p> <p>9 A. The point I'm making is that this is a</p> <p>10 different company and the Chow test demonstrates</p> <p>11 that it was different. Why you would put it in in</p> <p>12 the first place escapes me.</p> <p>13 Q. All right.</p> <p>14 A. So having said -- this is a different</p> <p>15 company, this is -- these athletes were not under</p> <p>16 management of Zuffa, their compensation was not</p> <p>17 determined by Zuffa, the contracts they signed were</p> <p>18 not signed by anybody from Zuffa, and yet they're</p> <p>19 being used for this. And what the Chow test</p> <p>20 demonstrated was, you know, not only shouldn't you</p> <p>21 put them in there in the first place, but they</p> <p>22 really are different. That's what the Chow test is</p> <p>23 demonstrating.</p> <p>24 Q. Strike Force was in the same market as</p> <p>25 Zuffa, correct?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">328</p> <p>1 Q. Do you know whether or not there is a 2 relationship between the standard bout contract and 3 the actual bout contracts? 4 A. A relationship? 5 Q. Yeah. 6 A. There might be. 7 Q. Have you studied whether there are 8 differences in terms of the term between the 9 standard bout contract and the actual bout 10 contracts that were executed? 11 A. Some contracts are different than the -- 12 than the standard bout contract. 13 Q. How many? 14 A. I don't know the number. 15 Q. What percentage? 16 A. I don't know. 17 Q. It's fair to say that if we assume that 18 Zuffa's bout contracts were for a shorter term and 19 fewer bouts when they had less market power, that 20 that would be -- that that circumstance would be 21 efficient? 22 MR. WIDNELL: Objection, form. 23 BY THE WITNESS: 24 A. Well, you've -- you've inserted that when 25 they had less market power.</p>	<p style="text-align: right;">330</p> <p>1 reasons to have longer contracts, but those 2 contracts are still not very long. 3 Q. The contracts that were shorter earlier on 4 when Zuffa had a smaller market share, were those 5 efficient? 6 A. In the context of the industry at the time 7 I suspect that they were. 8 Q. Were those procompetitive? 9 A. There's -- the -- there has -- remember 10 what my -- what my analysis said. When firms that 11 have no evident market power are using a practice, 12 one can generally infer that there's a 13 procompetitive rationale for the elements of those 14 contracts. 15 Q. Turn to paragraph 7, please. The 16 second-to-last line on the page, on page 2, in 17 paragraph 7 reads "Immediately following the 18 acquisition of UFC Zuffa expended significant 19 resources in legitimizing MMA. Zuffa was a prime 20 mover in creating a unified set of rules for the 21 sport and in convincing state athletic commissions 22 to sanction MMA." Do you see that? 23 A. Yes. 24 Q. You would agree that during the early 25 2000s Zuffa invested substantial resources in</p>
<p style="text-align: right;">329</p> <p>1 Q. Yes. 2 A. And I'm not -- I'm not opining that they 3 had -- they have more market power now, but there's 4 no allegation that they had market power back in 5 those earlier days. That's your premise. 6 Q. Okay. Fair enough. You agree that they 7 had a smaller share of the MMA market in the early 8 2000s than the late 2000s, right? 9 A. That's my recollection, at least 10 calculated in certain ways. 11 Q. Okay. And if we assume for purposes of 12 this question that share of the MMA market 13 correlates with market power, you would agree with 14 me that when Zuffa had less market power it had 15 shorter-term contracts with fewer bouts, correct? 16 A. Well, again, you're asking me to assume 17 something in your hypothetical, that they had some 18 substantive increase in market power, and all we 19 really know is that they had a larger share, which 20 is what they would get if they had just been -- 21 competitive market if they had just become more 22 successful as promoting and creating these kinds of 23 shows. So what I will agree to is that given the 24 facts that you've stated, when they -- earlier on 25 they had shorter contracts and later on they had</p>	<p style="text-align: right;">331</p> <p>1 developing the sport of MMA, right? 2 A. Yes. 3 Q. And in promoting MMA athletes, correct? 4 A. Yes. 5 Q. And it did so even with no evident market 6 power, correct? 7 A. Yes. 8 Q. And it did so with contracts of shorter 9 duration, correct? 10 A. That's your representation, yes. 11 Q. Do you provide any evidence in your report 12 that Zuffa would not have made these investments or 13 do the promotion in the early 2000s that they 14 did -- strike that. 15 Is it your representation that -- strike 16 that. 17 Turn to paragraph 82, please. You say 18 "Many of the provisions that Dr. Singer considers 19 to be exclusionary have been included in Zuffa 20 contracts since 2001, long before the start of the 21 class period and at a time when Zuffa could not 22 have plausibly exercised either monopoly or 23 monopsony power"; do you see that? 24 A. Yes. 25 Q. So at what date would you say it was at</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">340</p> <p>1 now you've inserted firm. So no.</p> <p>2 Q. All right. Firms in a market, if I change</p> <p>3 the -- the -- all right. I'll reask the question</p> <p>4 this way. A market can have an infinite number --</p> <p>5 in order for a market to have a horizontal supply</p> <p>6 curve there would need to be an infinite number of</p> <p>7 equivalent workers at exactly the same wage; is</p> <p>8 that right?</p> <p>9 A. No.</p> <p>10 Q. What was wrong with that?</p> <p>11 A. Infinite. Does the -- the supply curve</p> <p>12 needs to be -- can be perfectly elastic over a</p> <p>13 relevant range where demand in this market is</p> <p>14 shifting and there will be no material effect on</p> <p>15 prices. I mean, there's not an infinite number of</p> <p>16 workers anywhere.</p> <p>17 Q. Okay. So a firm would need to have a</p> <p>18 substantial material number of equivalent</p> <p>19 workers -- I mean, a market would need to have a</p> <p>20 substantial number of equivalent workers at exactly</p> <p>21 the same wage in order for there to be a horizontal</p> <p>22 supply curve; is that right?</p> <p>23 A. I said over the relevant range.</p> <p>24 Q. Over the relevant --</p> <p>25 A. So if we -- if we have -- there needs to</p>	<p style="text-align: right;">342</p> <p>1 firm's here and there's other firms and I'm going</p> <p>2 to hire -- instead of trying to attract people to</p> <p>3 my taco stand I'm going to hire people from along</p> <p>4 the road between my firm and another firm and</p> <p>5 they're all uniformly distributed. I'm making up</p> <p>6 this model. And I'll get the same taco stand kind</p> <p>7 of thing on the input side. If I want to hire more</p> <p>8 I have to reach further down the road and it's</p> <p>9 costly to drive. So I'll increase the marginal</p> <p>10 price that I pay -- I'll have to increase the</p> <p>11 marginal price that I pay.</p> <p>12 Q. Okay. So let's take your taco stand</p> <p>13 example. You have to taco stand A on one side of</p> <p>14 the road and then a mile away you have taco stand</p> <p>15 B.</p> <p>16 A. Yeah.</p> <p>17 Q. Now let's say somebody puts a toll on that</p> <p>18 road and all of a sudden in order to get from taco</p> <p>19 stand A to taco stand B it costs a hundred dollars</p> <p>20 and before it used to cost zero dollars. All</p> <p>21 things equal, would that toll increase the mobility</p> <p>22 costs of workers?</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. So now I'm -- just -- just so I'm clear,</p>
<p style="text-align: right;">341</p> <p>1 be enough to prevent the wage from rising when</p> <p>2 demand shifts.</p> <p>3 Q. All right.</p> <p>4 A. And enough depends on the circumstances.</p> <p>5 Q. Is it fair to say that when mobility of</p> <p>6 workers is -- becomes restricted or is costly firms</p> <p>7 in that market could obtain some monopsony power?</p> <p>8 A. Your statement is so broad and vague</p> <p>9 that -- you know, I'll come back to my taco stands.</p> <p>10 And there's some costs of going to the next taco</p> <p>11 stand so that people who live closest to my taco</p> <p>12 stand prefer my taco stand to the taco stand that's</p> <p>13 further away even though our tacos are in all other</p> <p>14 respects identical. That means that if I cut the</p> <p>15 price of my tacos more people come to me. If I</p> <p>16 raise the price of my tacos fewer people come to</p> <p>17 me. That is not a completely horizontal demand</p> <p>18 curve. So in that sense -- and that's the sense in</p> <p>19 which George is using it here in a lot of this</p> <p>20 discussion -- one might say that there's a degree</p> <p>21 of monopsony power if we define -- if we define</p> <p>22 monopsony power to mean that if I cut my price I</p> <p>23 sell more and if I raise my price I say monopsony</p> <p>24 power in that case. And you can do the same thing</p> <p>25 on the other side of the market. So, you know, my</p>	<p style="text-align: right;">343</p> <p>1 now I'm hiring workers for my taco stand?</p> <p>2 Q. Yes.</p> <p>3 A. So there's a toll that prevents people</p> <p>4 from the other side of town getting to my taco</p> <p>5 stand?</p> <p>6 Q. Yes, and vice-versa.</p> <p>7 A. Okay. So yeah, there's fewer people that</p> <p>8 I can hire from the other side of town.</p> <p>9 Q. So now as compared to a world with the</p> <p>10 hundred-dollar toll and the world without the</p> <p>11 hundred-dollar toll, the two taco stands in the</p> <p>12 world with the hundred-dollar toll have more</p> <p>13 monopsony power than the world without the</p> <p>14 hundred-dollar toll, correct?</p> <p>15 MR. WIDNELL: Objection, form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I think what you're trying to say is</p> <p>18 that -- let's say here's A and B taco stands and</p> <p>19 the middle of town is halfway in between, and then</p> <p>20 I build a wall, okay, the Berlin Wall there so</p> <p>21 people can't get across from -- from -- so people</p> <p>22 between halfway and my taco stand and the</p> <p>23 percentage -- there's nobody else in town -- can</p> <p>24 only work for my taco stand. They can't go work</p> <p>25 for the other taco stand.</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">344</p> <p>1 Q. Correct.</p> <p>2 A. Is that what we're saying?</p> <p>3 Q. Yes.</p> <p>4 A. Yeah. So these people have fewer options.</p> <p>5 I got it.</p> <p>6 Q. And when you compare the world with the</p> <p>7 Berlin Wall in your example in the world without</p> <p>8 the Berlin Wall, the firm with the Berlin Wall has</p> <p>9 more monopsony power, correct?</p> <p>10 A. The firm with the -- the firm -- I -- I</p> <p>11 won't be competing as aggressively to get people</p> <p>12 from across the place where the border is now. So,</p> <p>13 you know, I don't know how things played out in the</p> <p>14 output market. I mean, I understand what you're</p> <p>15 trying to say and you're saying the same thing</p> <p>16 here, and you're saying the same thing that I said.</p> <p>17 There's a degree of monopsony power. You didn't</p> <p>18 need the wall. I already said there's a degree of</p> <p>19 what some people would call monopsony power there</p> <p>20 by the fact that it is -- it is costly to move from</p> <p>21 A to B.</p> <p>22 Q. And --</p> <p>23 A. So if it became more costly to move from A</p> <p>24 to B, that degree of -- of control over price would</p> <p>25 increase a little bit.</p>	<p style="text-align: right;">346</p> <p>1 Q. So all things equal, the higher the</p> <p>2 mobility costs in the example the more monopsony</p> <p>3 power the firms in that example have, all things</p> <p>4 equal; is that right?</p> <p>5 MR. WIDNELL: Objection, form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. It was important that you said twice "in</p> <p>8 that example." So I agree.</p> <p>9 Q. And in that example we're talking about</p> <p>10 taco stands, right? These aren't Taco Bell, right?</p> <p>11 It could be a small firm that has some degree of</p> <p>12 monopsony power; is that right?</p> <p>13 A. Yes. Well, as the term -- as we're using</p> <p>14 the term. It's just a dangerous term on both sides</p> <p>15 of the market.</p> <p>16 Q. Is it fair to say that one reason why</p> <p>17 non-Zuffa firms employ some of the challenged</p> <p>18 contractual provisions that we've talked about is</p> <p>19 to restrain the mobility of the fighters that work</p> <p>20 for them?</p> <p>21 A. It's to do all the things we've discussed</p> <p>22 before that -- you know, to see to it that they get</p> <p>23 the returns on their investments and that their</p> <p>24 ability to manage a multi-bout career progression</p> <p>25 is not interfered with.</p>
<p style="text-align: right;">345</p> <p>1 Q. So all things equal, the higher the</p> <p>2 mobility costs in your example the higher the</p> <p>3 monopsony power of the firms, correct?</p> <p>4 MR. WIDNELL: Objection, form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Yeah. It depends on how we make the</p> <p>7 mobility costs and things like that. It depends on</p> <p>8 what we do with the mobility costs.</p> <p>9 Q. We raise the costs. So go back to my toll</p> <p>10 example. Assume that the Berlin Wall costs \$100 to</p> <p>11 get from one side to the other and now assume it</p> <p>12 costs a thousand dollars to get from one side to</p> <p>13 the other. As compared to the world where it costs</p> <p>14 a hundred dollars to the world where it costs a</p> <p>15 thousand dollars, the firms in the world where it</p> <p>16 costs a thousand dollars would have a higher degree</p> <p>17 of monopsony power than the -- all things equal,</p> <p>18 than the firms in the world where it costs a</p> <p>19 hundred dollars.</p> <p>20 A. I think what you're trying to establish is</p> <p>21 that the people on my side of the wall have fewer</p> <p>22 places -- because there's only two places, have</p> <p>23 fewer places at which they can work and that</p> <p>24 affects the wage that I have to pay to get them to</p> <p>25 work for me, and I agree with that.</p>	<p style="text-align: right;">347</p> <p>1 Q. And one way in which they achieve those</p> <p>2 ends is by restricting the mobility of the workers,</p> <p>3 correct?</p> <p>4 A. In the sense that I just used, yes.</p> <p>5 Q. And so in that sense even these smaller</p> <p>6 promotions can use these contracts to gain some</p> <p>7 measure of monopsony power; is that right?</p> <p>8 A. No.</p> <p>9 Q. Are you aware of evidence in the record</p> <p>10 that Strike Force or Bellator said -- or the</p> <p>11 executives at Strike Force or Bellator said that</p> <p>12 they based their contracts with their athletes in</p> <p>13 part on the fact that the UFC used similar</p> <p>14 contracts with its athletes?</p> <p>15 A. You know, I recall some discussion similar</p> <p>16 to that.</p> <p>17 Q. You're aware, are you not, of record</p> <p>18 evidence showing that smaller MMA promotions like</p> <p>19 Strike Force or Bellator have said that they impose</p> <p>20 some of the contractual provisions because the UFC</p> <p>21 did, right?</p> <p>22 A. I don't know if the word "because" was</p> <p>23 used. I wouldn't be surprised if they went out and</p> <p>24 copied some contract provisions from UFC or someone</p> <p>25 else.</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">348</p> <p>1 MR. CRAMER: All right. I'd like to mark 2 as the next exhibit a piece of the testimony from 3 Scott Coker in this case. What exhibit? 4 THE REPORTER: 10. 5 (Topel Exhibit 10 was marked 6 as requested.) 7 BY MR. CRAMER: 8 Q. What you've just been handed is 9 Exhibit 10. 10 A. Yep. 11 Q. It is a portion of the transcript of the 12 deposition of Scott Coker that was taken August 13 3rd, 2017 and it was taken in this case. 14 A. This is the Bellator fellow? 15 Q. And Strike Force. He was at both. 16 A. Okay. 17 Q. Did you have an opportunity to review this 18 deposition transcript? 19 A. Not in its entirety. 20 Q. You read some of it? 21 A. Some of it, yeah. I believe so. 22 Q. Turn to page 245 of the transcript which 23 is on the third -- it's the third page of the 24 exhibit. Do you see that on the bottom right-hand 25 corner?</p>	<p style="text-align: right;">350</p> <p>1 had to put it in there as well." 2 And then on line 25 he's asked "Would you 3 have put that clause -- the matching rights clause 4 in there if you thought it was detrimental to the 5 fighters." 6 A. Where's that? 7 Q. On the top of 246. 8 And then Mr. Coker answers "I mean, we 9 treat our fighters extremely well, but this is also 10 a business side where I have -- it's my job to 11 protect the company, and if one company out there 12 that's the industry leader is doing it and you're 13 not doing it, then it's not creating a fair playing 14 field." 15 Do you see that? 16 A. Yes. 17 Q. So is it fair to say from that testimony 18 that one of the reasons why Mr. Coker implemented 19 the right to match was as a strategic response to 20 the fact that the UFC also had the right to match 21 in its contracts? 22 A. Well, that's one reason. He's noticed 23 that UFC has this and UFC's able to -- the 24 operative word down here at the end of his first 25 answer is "For us to be competitive we had to put</p>
<p style="text-align: right;">349</p> <p>1 A. You said 245, right? 2 Q. Yes. 3 A. 245 is the bottom right of the second 4 page. 5 Q. Yes. 6 A. Okay. 7 Q. After the title page. 8 All right. I'm going to draw your 9 attention to the testimony beginning at line 3 on 10 page 245, and I'll read it into the record and then 11 we can discuss it. 12 "Now, let's go back a little bit to the 13 right to match clause. You mentioned that some of 14 the Strike Force contracts had a matching right; is 15 that right?" 16 Answer: "Yes." 17 Question: "You didn't think having a 18 matching right or right to match clause was unfair 19 to the fighters, did you?" 20 And the witness says "There's two sides. 21 There's two answers to that. One is this is 22 something that really came from the UFC and it was 23 like an industry standard when I got into the 24 business, right? So they are the first ones to put 25 it in there. And so for us to be competitive we</p>	<p style="text-align: right;">351</p> <p>1 in there as well." 2 Q. All right. You can put that aside. 3 Have you seen evidence that -- in the 4 record that certain MMA promotions other than 5 Zuffa, smaller MMA promotions have said that they 6 would abandon certain of the contractual provisions 7 if the UFC would? 8 A. That sounds like something that might get 9 you in antitrust trouble anyway, but the -- I 10 haven't seen statements to that effect, but I'm 11 sure you'll show me. 12 MR. CRAMER: Okay. All right. I'm going 13 to have the court reporter mark as the next exhibit 14 a series of e-mails. 15 (Topel Exhibit 11 was marked 16 as requested.) 17 BY MR. CRAMER: 18 Q. The court reporter has marked as 19 Exhibit 11 a two-page document bearing the Bates 20 range ZFL-1904802 through 4803, and I'd like to 21 draw your attention to the e-mail at the bottom of 22 the page from Michael Chiappetta to Anthony Evans 23 at the UFC. 24 A. Yes. 25 Q. And then I'm particularly talking about</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">352</p> <p>1 the run -- one at 4:43 p.m. from Chiappetta who is</p> <p>2 talking about a conversation he had with Bjorn</p> <p>3 Rebney. Bjorn Rebney was the head of Bellator at</p> <p>4 the time and this is dated September 25th, 2012.</p> <p>5 And I'd like to turn your attention to the next</p> <p>6 page where Chiappetta, who is a reporter, is</p> <p>7 reporting a conversation that Chiappetta had with</p> <p>8 Rebney to the UFC.</p> <p>9 A. Can I -- can I just read the rest of</p> <p>10 this.</p> <p>11 Q. Please do.</p> <p>12 (Witness reviewing document.)</p> <p>13 BY THE WITNESS:</p> <p>14 A. Remind me who Mike is because you've only</p> <p>15 got a Gmail address.</p> <p>16 Q. Mike Chiappetta is an MMA reporter.</p> <p>17 Anthony Evans is an executive at the UFC.</p> <p>18 A. So he's conveying some conversation that</p> <p>19 he had with somebody at Bellator; is that what he's</p> <p>20 doing?</p> <p>21 Q. Correct. Chiappetta communicated with</p> <p>22 Bjorn Rebney, who was the President of Bellator at</p> <p>23 the time, and then he's communicating a</p> <p>24 conversation that Chiappetta had with Rebney to the</p> <p>25 UFC. And on the second page of the e-mail --</p>	<p style="text-align: right;">354</p> <p>1 these clauses is to protect the investments that</p> <p>2 have already occurred.</p> <p>3 Now, on the first page here it says that</p> <p>4 "The matching rights clause for fighters that have</p> <p>5 been released, Bellator has it in their contracts</p> <p>6 and Dana" -- I take it that's Dana White -- "said</p> <p>7 last week that UFC has in their contracts too.</p> <p>8 Although he said it's never been used." So this</p> <p>9 is -- it's an equilibrium where this contract</p> <p>10 restriction has not been used. It could be still</p> <p>11 binding, but it hasn't been used.</p> <p>12 Q. Is it your opinion that the right to match</p> <p>13 clause has never been, quote/unquote, used?</p> <p>14 A. I didn't offer that opinion. I'm just</p> <p>15 saying that that's what it says here.</p> <p>16 Q. Is it your opinion that if the UFC has</p> <p>17 never during -- had never during a right to match</p> <p>18 period matched a rival's bid that that would mean</p> <p>19 the right to match clause had no effect in the</p> <p>20 marketplace?</p> <p>21 A. That was the implication that I was trying</p> <p>22 to convey at the end of my answer. That doesn't</p> <p>23 mean that it's not binding. It doesn't mean that</p> <p>24 it doesn't have an effect. It's not -- it's not</p> <p>25 put into the contracts for nothing. It serves a</p>
<p style="text-align: right;">353</p> <p>1 A. He says "Eventually"; is that sentence</p> <p>2 you'd like me to read?</p> <p>3 Q. Yes. Chiappetta says "Eventually he" --</p> <p>4 referring to Rebney -- said "he would be willing to</p> <p>5 do away with the section that allows them to</p> <p>6 release a fighter and retain matching rights if</p> <p>7 Zuffa would also do the same"; do you see -- do you</p> <p>8 see that?</p> <p>9 A. I see that.</p> <p>10 Q. Do you know whether Zuffa eliminated the</p> <p>11 right to match clause in response to Rebney's</p> <p>12 challenge?</p> <p>13 MR. WIDNELL: Objection, form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Well, you know, I don't know if there was</p> <p>16 an actual challenge. This is being relayed by a</p> <p>17 reporter. We know how sometimes that can get</p> <p>18 muddled. But I don't know if this is in -- this</p> <p>19 sounds like it's in the context of a particular</p> <p>20 transaction, but, you know, one wouldn't be</p> <p>21 surprised if some competitor would say, hey, you've</p> <p>22 invested a lot in all these folks, wouldn't you</p> <p>23 like to get rid of this clause because then, you</p> <p>24 know, it would give us greater access to the people</p> <p>25 you've invested in. That's the point of having</p>	<p style="text-align: right;">355</p> <p>1 purpose.</p> <p>2 Q. So even if the right to match clause has</p> <p>3 never been, quote/unquote, used, it's still having</p> <p>4 an effect in the marketplace, correct?</p> <p>5 A. It could be having an effect in the</p> <p>6 marketplace even if they've never had to invoke.</p> <p>7 Q. And why is that?</p> <p>8 A. Because -- because they've never had to</p> <p>9 match, for one reason, is that they've always been</p> <p>10 paying more would be a good reason. They have --</p> <p>11 people haven't been able to get as good an offer.</p> <p>12 It might be also in this equilibrium that, say,</p> <p>13 Bellator realizes that Zuffa has a right to match</p> <p>14 and because of past investments the athlete is more</p> <p>15 valuable to Zuffa than to Bellator. So it's</p> <p>16 unlikely to win in the bidding process.</p> <p>17 Q. Sounds to me like that answer said the</p> <p>18 right to match is not doing any work. How is the</p> <p>19 right to match doing any work, procompetitive work</p> <p>20 or anticompetitive work, economic work if Zuffa</p> <p>21 would just outbid any potential rival? Why doesn't</p> <p>22 Zuffa just get rid of the right to match, then, if</p> <p>23 it knows it can just outbid any rival?</p> <p>24 A. Well, we go through this in my report.</p> <p>25 The -- the right to match gives Zuffa the right to</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">356</p> <p>1 match the relevant elements of a contract that's 2 been offered from a competitor. And so if you -- 3 if it came down to, oh, why don't they just -- why 4 don't they just outbid, well, if Bellator makes its 5 best offer and it knows that Zuffa will match, 6 then, you know, the returns to making its best 7 offer aren't as high as otherwise. Now, take 8 that -- take away the right to match and you come 9 back to the example that I have in my report about 10 the holdup problem where you're more valuable to 11 Zuffa, the athlete knows it. So now you've got a 12 bilateral negotiation where there's no determinant 13 solution in economics except that it's going to be 14 somewhere in between and depends on the relative 15 intransigence of the two parties where you're going 16 to end up. 17 Q. So you just said -- 18 A. Let me finish. So I said that the -- what 19 I've just described is the holdup problem that's in 20 my report that the right of first refusal is 21 designed to avoid. 22 Q. One of the things you said is that if 23 Bellator makes its best bid during a UFC right to 24 match period the returns to Bellator to making that 25 bid aren't as high as they would be without the</p>	<p style="text-align: right;">358</p> <p>1 to match period or a fighter who has waited a year 2 and we're a day after the right to match period is 3 over, would Bellator's incentives to make a bid be 4 different once the right to match period expires 5 than during the right to match? 6 A. They could be, though there's a question 7 of why Bellator make an offer in the right to match 8 period and they're gaining information about this 9 fighter from the fact that -- it's your 10 hypothetical. There's no contract between Zuffa 11 and the fighter a year after the end of his 12 contract. So you're -- Bellator's looking at that 13 at the end and saying, you know, winner's curse 14 might be operative here. So if we win what is it 15 that Zuffa knew about this fighter that we don't. 16 Q. Well, assume that Zuffa made a bid and the 17 fighter didn't accept it. 18 A. Okay. 19 Q. I'll withdraw it. I'm going to move on. 20 Would you agree with me that the conduct 21 engaged in by a firm without market power could 22 be -- could have anticompetitive effects when that 23 same conduct is engaged in by a firm with market 24 power? 25 A. That's conceivable.</p>
<p style="text-align: right;">357</p> <p>1 right-to-match period in place; is that right? 2 A. No. I just said given that the right to 3 match is there, Bellator has to make a calculation 4 that says here's what this athlete is worth to us 5 and let us assume -- and that's the assumption of 6 my example -- that the athlete is worth more 7 because of past investments to Zuffa than to 8 Bellator. So in making this offer you're not 9 certain of what the value to Zuffa is, but it's 10 very likely to be higher. So I put all the -- I 11 put all the numbers into a contract, the athlete 12 takes the contract to Zuffa, and Zuffa says done, 13 we'll pay that, and that's our right of first 14 refusal. And so we can invoke that. 15 Q. So what effect, in your view, does that 16 have Bellator's incentives to make a bid? 17 A. Bellator may have -- well, relative to 18 what because I don't -- if -- if it's -- I think we 19 went over this yesterday. Suppose we canceled the 20 right -- in one guy's contract, everybody else's 21 contract stays the same. I know we did this -- 22 Q. I think I can make it easier. 23 A. I know we did this yesterday. 24 Q. We did. I think I can just make it 25 easier. The right to -- a fighter during the right</p>	<p style="text-align: right;">359</p> <p>1 Q. How is that conceivable? 2 A. Well, take the -- I mean, often in 3 contract disputes under section 2, like exclusive 4 dealing or loyalty discounts or something like 5 that, under certain prerescriptive conditions 6 things that have procompetitive effects can also 7 have anticompetitive effects if certain conditions 8 are satisfied. 9 Q. Well, is bundling -- product bundling one 10 of those examples? Product bundles has many 11 procompetitive effects and when engaged in by a 12 firm without market power in any of the markets in 13 which the products they're bundling -- 14 MR. WIDNELL: Objection, form. 15 BY MR. CRAMER: 16 Q. I'll rephrase. Could bundling be one of 17 those examples where product bundling can be 18 anticompetitive when engaged in by a firm with 19 market power and procompetitive when engaged in by 20 a firm without market power? 21 A. Yes, that's -- I mean, that and a myriad 22 of other examples under section 2. 23 MR. WIDNELL: I just want to make clear, 24 you're asking for an economic opinion here, not a 25 legal opinion; is that right?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">360</p> <p>1 MR. CRAMER: Yes. I'm not asking for any</p> <p>2 legal opinion.</p> <p>3 MR. WIDNELL: Okay. I just want to</p> <p>4 avoid --</p> <p>5 THE WITNESS: Yep, that's fine.</p> <p>6 MR. WIDNELL: -- making that objection</p> <p>7 over and over.</p> <p>8 THE REPORTER: Guys.</p> <p>9 BY MR. CRAMER:</p> <p>10 Q. Turn to paragraph 43, please. All right.</p> <p>11 In paragraph 43 you quote a document. I believe</p> <p>12 it's the Deutsche -- one of the Deutsche Bank</p> <p>13 documents and I'm just looking for that. All</p> <p>14 right. Towards the middle of paragraph 43 you say</p> <p>15 "As one document quoted by Dr. Singer states"; do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. "UFC holds the dominant market position</p> <p>19 within the sport and continues to do so even as a</p> <p>20 highly fragmented group of competitors have entered</p> <p>21 the market in an attempt to emulate UFC's success";</p> <p>22 do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you agree with that characterization of</p> <p>25 UFC's position in the market versus other</p>	<p style="text-align: right;">362</p> <p>1 MR. WIDNELL: I just want to briefly note</p> <p>2 an objection for completeness.</p> <p>3 MR. CRAMER: Okay.</p> <p>4 BY MR. CRAMER:</p> <p>5 Q. If there's something as you read through</p> <p>6 this document that you think is missing, please let</p> <p>7 me know. Okay?</p> <p>8 A. Okay. Sorry.</p> <p>9 MR. WIDNELL: Just to be clear, it's not</p> <p>10 in the document. The document was an attachment to</p> <p>11 an e-mail.</p> <p>12 MR. CRAMER: Oh, okay. Fair enough.</p> <p>13 BY MR. CRAMER:</p> <p>14 Q. Fair to say in your report you don't cite</p> <p>15 any e-mail that attaches this document, right?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. Okay.</p> <p>18 All right. On page 16 under the heading</p> <p>19 "Overview of world's leading MMA brands" the</p> <p>20 document states "Zuffa owns three of the largest</p> <p>21 and most recognized MMA brands in the world, the</p> <p>22 Ultimate Fighting Championship, World Extreme Cage</p> <p>23 Fighting, and Pride Fighting Championships"; do you</p> <p>24 see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">361</p> <p>1 competitors?</p> <p>2 A. I'm just offering it as somebody's</p> <p>3 opinion. You can have different definitions of</p> <p>4 dominant, but Zuffa is the largest and most</p> <p>5 successful firm in the market.</p> <p>6 Q. All right. I'm going to show you the</p> <p>7 document that Dr. Singer was quoting and have it</p> <p>8 marked as Exhibit 12.</p> <p>9 (Topel Exhibit 12 was marked</p> <p>10 as requested.)</p> <p>11 BY MR. CRAMER:</p> <p>12 Q. And I'll note that you cite this document</p> <p>13 in footnote 45.</p> <p>14 A. Okay.</p> <p>15 Q. It is entitled "UFC/Zuffa, LLC DBA</p> <p>16 Ultimate Fighting Championship, Confidential</p> <p>17 Information Memorandum." It's dated October 2009</p> <p>18 and it was put out by Deutsche Bank. You've seen</p> <p>19 this document before, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you recognize that Zuffa management</p> <p>22 had input into this document, correct?</p> <p>23 A. One would assume.</p> <p>24 Q. All right. Turn to page 16 internally to</p> <p>25 the document.</p>	<p style="text-align: right;">363</p> <p>1 Q. And this is about a year before Zuffa</p> <p>2 purchased Strike Force; is that right?</p> <p>3 A. That's correct.</p> <p>4 Q. And in the first bullet point Deutsche</p> <p>5 Bank says "Among Zuffa's three MMA brands, the UFC</p> <p>6 holds the dominant market position within the sport</p> <p>7 and continues to do so even as a highly fragmented</p> <p>8 group of competitors have entered the market in an</p> <p>9 attempt to emulate UFC's success." That's the</p> <p>10 portion you quoted in your report; is that right?</p> <p>11 A. Yes. Quoted from Dr. Singer, but he's</p> <p>12 quoting from the report.</p> <p>13 Q. And is it your view that -- strike that.</p> <p>14 I believe you testified that it is your</p> <p>15 opinion that Zuffa is the market leader among MMA</p> <p>16 promoters; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And would you agree that that was the case</p> <p>19 since 2001?</p> <p>20 A. I don't recall the circumstances</p> <p>21 completely in 2001. The market was pretty small.</p> <p>22 They might been the largest producer back then.</p> <p>23 Q. And that remained the case from the date</p> <p>24 of this document, October 2009, to the present,</p> <p>25 correct?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">372</p> <p>1 present a competitive threat to the UFC?</p> <p>2 A. They might have. I think all firms in</p> <p>3 this market present a competitive threat to UFC.</p> <p>4 Q. So when Zuffa purchased Strike Force, for</p> <p>5 example, it was eliminating, in your opinion, a</p> <p>6 competitive threat; is that right?</p> <p>7 A. Well, no. The -- take Strike Force, for</p> <p>8 example. You know, everybody in the -- if they</p> <p>9 bought some small firm there's some competition</p> <p>10 from that firm, that's all I'm saying. I mean, we</p> <p>11 wouldn't want to say that these firms are in the</p> <p>12 market and they don't compete with Zuffa. They</p> <p>13 were competing for athletes, they were competing</p> <p>14 for eyeballs, they were competing, and the question</p> <p>15 is whether it was addressed by antitrust</p> <p>16 authorities and the like is whether these</p> <p>17 acquisitions materially affected competition in the</p> <p>18 market. Evidently they found that they didn't.</p> <p>19 So -- but these were -- these were firms operating</p> <p>20 and there are always benefits and potential costs</p> <p>21 of allowing acquisitions.</p> <p>22 Q. At the time that Strike Force was</p> <p>23 purchased in 2010, did Strike Force, in your</p> <p>24 opinion as an economist, present a significant</p> <p>25 economic threat to the UFC?</p>	<p style="text-align: right;">374</p> <p>1 not profitable and doesn't do business in the</p> <p>2 United States?</p> <p>3 Q. Is it your opinion that Bellator has</p> <p>4 substantial market share and is profitable?</p> <p>5 A. It's -- it's got a substantial position in</p> <p>6 the market and it seems to be surviving.</p> <p>7 Q. Is it your opinion that Bellator is</p> <p>8 profitable currently?</p> <p>9 A. Well, it's an ongoing entity. So the</p> <p>10 present discounted value of what those investors</p> <p>11 think that this project is worth must be</p> <p>12 positive.</p> <p>13 Q. Is it your opinion that the revenues that</p> <p>14 Bellator brings in in any year exceed the costs of</p> <p>15 running the organization in that year?</p> <p>16 A. I've not looked at the balance sheets of</p> <p>17 Bellator, but given that they're still in business,</p> <p>18 there must be some anticipation of positive cash</p> <p>19 flow even if it's negative today.</p> <p>20 Q. So you're saying that it's your</p> <p>21 understanding that there's an anticipation that</p> <p>22 Bellator will one day be profitable, but you don't</p> <p>23 understand that Bellator's profitable today; is</p> <p>24 that right?</p> <p>25 MR. WIDNELL: Objection, form.</p>
<p style="text-align: right;">373</p> <p>1 MR. WIDNELL: Objection, form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Not such a threat that the acquisition</p> <p>4 would have -- would have materially affected</p> <p>5 competition to the detriment of consumers and --</p> <p>6 and fighters.</p> <p>7 Q. Did Pride at the time it was purchased</p> <p>8 present a significant economic competitive threat</p> <p>9 to Zuffa at the time it was purchased?</p> <p>10 A. And my answer's the same.</p> <p>11 Q. Would it be the same for all of the</p> <p>12 entities?</p> <p>13 A. Yes.</p> <p>14 Q. Is it fair to say that even if we put the</p> <p>15 promoters that Zuffa acquired aside --</p> <p>16 A. Let me finish -- let me say -- I should</p> <p>17 have put the word "adversely" affect competition.</p> <p>18 Q. Is it fair to say, putting the promoters</p> <p>19 that Zuffa acquired aside, that your report does</p> <p>20 not identify a single MMA promotion other than</p> <p>21 Zuffa that does business in the United States that</p> <p>22 had substantial market share and was profitable?</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. Are we -- are we saying that Bellator's</p>	<p style="text-align: right;">375</p> <p>1 BY THE WITNESS:</p> <p>2 A. Well, I'm not -- I'm not offering an</p> <p>3 opinion of whether they have positive cash flow</p> <p>4 today.</p> <p>5 Q. When in your --</p> <p>6 A. Just as Zuffa did not have positive cash</p> <p>7 flow when it was a young and nascent participant in</p> <p>8 this market.</p> <p>9 Q. When, in your opinion, did Bellator come</p> <p>10 to have significant market share in the United</p> <p>11 States?</p> <p>12 A. I don't recall the time series on</p> <p>13 Bellator's market share. I recall that they have</p> <p>14 television contracts. They're backed by Viacom and</p> <p>15 so on.</p> <p>16 Q. Putting Bellator aside for the moment, can</p> <p>17 you identify another MMA promotion that does</p> <p>18 business in the United States that has significant</p> <p>19 market share, in your opinion, and is profitable?</p> <p>20 A. Well, a lot of these must be profitable.</p> <p>21 King of the Cage has been around putting on dozens</p> <p>22 of events every year for many years. There's a</p> <p>23 long list of promoters that are -- that are doing</p> <p>24 this and -- you know, the market share you're</p> <p>25 referring to is very limited in its scope because</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">376</p> <p>1 it only focuses on a certain identified group of</p> <p>2 fighters, but on any given weekend there are</p> <p>3 hundreds -- or any given month, let's say,</p> <p>4 hundreds, maybe thousands of these events going on</p> <p>5 across the country that have nothing to do with</p> <p>6 Zuffa.</p> <p>7 Q. Is it your opinion that King of the Cage</p> <p>8 has a -- earns a substantial share of the revenues</p> <p>9 brought in by MMA events in the United States?</p> <p>10 A. That's not what I said. I just said it's</p> <p>11 out there, it's surviving, it must be making</p> <p>12 money.</p> <p>13 Q. Do you know whether King of the Cage</p> <p>14 copromotes events for other MMA promoters?</p> <p>15 A. They might.</p> <p>16 THE REPORTER: Can we take a break?</p> <p>17 MR. CRAMER: Yes. Let's go off the</p> <p>18 record.</p> <p>19 THE VIDEOGRAPHER: Going off the record at</p> <p>20 11:19.</p> <p>21 (A short break was had.)</p> <p>22 THE VIDEOGRAPHER: We're going back on the</p> <p>23 record at 11:35. This beginnings disk No. 3.</p> <p>24 BY MR. CRAMER:</p> <p>25 Q. You testified about certain MMA promotions</p>	<p style="text-align: right;">378</p> <p>1 and other stuff.</p> <p>2 Q. Well, let's talk about the Minor Leagues</p> <p>3 in baseball. Is it fair to say that one purpose to</p> <p>4 which NBA -- I'm sorry -- Major League Baseball</p> <p>5 clubs use the Minor Leagues is to develop talent</p> <p>6 that ultimately would make it to the Major Leagues</p> <p>7 correct?</p> <p>8 A. Of course.</p> <p>9 Q. And is there a similar purpose in MMA for</p> <p>10 Minor Leagues?</p> <p>11 MR. WIDNELL: Objection, form.</p> <p>12 THE REPORTER: I'm sorry. I can't hear</p> <p>13 you.</p> <p>14 MR. WIDNELL: Objection, form. Can you</p> <p>15 hear me?</p> <p>16 BY THE WITNESS:</p> <p>17 A. First of all, I don't think there are any</p> <p>18 Minor Leagues. Maybe the better analogy is to</p> <p>19 soccer where one can aspire to be premiere league</p> <p>20 and might move up over time. Whereas I don't think</p> <p>21 the -- I've got to remember a team that's in the</p> <p>22 Pacific. The Albuquerque whatever's are not</p> <p>23 aspiring to be a major league franchise.</p> <p>24 (Topel Exhibit 13 was marked</p> <p>25 as requested.)</p>
<p style="text-align: right;">377</p> <p>1 like King of the Cage a moment ago; do you recall</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware that there's evidence that</p> <p>5 Zuffa considered some of these MMA promotions,</p> <p>6 quote/unquote, minor leagues?</p> <p>7 A. Yes.</p> <p>8 Q. What did it mean to be a minor league in</p> <p>9 the MMA business?</p> <p>10 A. I don't think there's a formal definition.</p> <p>11 I could only give you what, you know, somebody</p> <p>12 might extend from baseball to -- because that's</p> <p>13 where it -- the term is generally used, to some</p> <p>14 other sport.</p> <p>15 Q. So what does it mean to you in baseball?</p> <p>16 A. That, you know, the Minor Leagues like AAA</p> <p>17 or Pacific Coast Leagues or places where -- where</p> <p>18 athletes play either because they like playing or</p> <p>19 because they hope to make it to the Major Leagues.</p> <p>20 You can have a career there, that it's in the</p> <p>21 business, and the teams are viable.</p> <p>22 Q. And basketball has the G league; is that</p> <p>23 right? Used to be the D league.</p> <p>24 A. I don't know whether it's called the</p> <p>25 G league. The Continental Basketball Association</p>	<p style="text-align: right;">379</p> <p>1 BY MR. CRAMER:</p> <p>2 Q. All right. I've had the court reporter</p> <p>3 mark as Topel Exhibit 13 the next document. I'm</p> <p>4 going to put it in front of you. This is a</p> <p>5 document written by Zuffa's lawyers, Axinn Veltrop</p> <p>6 Harkrider, LLP. It's entitled "The FTC's</p> <p>7 Investigation of Zuffa's Conduct Should be Closed."</p> <p>8 It bears the Bates range ZFL-1212232 through 259,</p> <p>9 and I'll note for the record that you cite this</p> <p>10 document in paragraph 79, footnote 134. You can</p> <p>11 verify that. Page 34.</p> <p>12 (Witness reviewing document.)</p> <p>13 BY THE WITNESS:</p> <p>14 A. Okay.</p> <p>15 Q. The document you're citing is in</p> <p>16 paragraph -- footnote 134.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So you recall this document?</p> <p>19 A. I recall elements of this document. As I</p> <p>20 look at the cover of it, I don't recall the</p> <p>21 cover.</p> <p>22 Q. And it was written by Zuffa's lawyers</p> <p>23 relating to the UFC's acquisition of Strike Force;</p> <p>24 is that right?</p> <p>25 A. Yeah. Roman numeral I up here, the Strike</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">380</p> <p>1 Force acquisition has already led to more 2 compensation, this, that, and the other thing. 3 Q. And do you know what the Federal Trade 4 Commission was doing investigating Zuffa after this 5 Strike Force acquisition? 6 A. My recollection was it was looking to see 7 whether the acquisition had procompetitive effects 8 and whether contract terms also had procompetitive 9 or -- balancing procompetitive and any potential 10 anticompetitive effects. 11 Q. So this document is from 2010; is that 12 right? I'm sorry. 2011. 13 A. It would have to be from around that date 14 I assume, but I don't see any date on this. So... 15 Q. It discusses on, for example, page 4 and 5 16 some documents from 2011. 17 A. Unless they had a time machine, then 18 they -- 19 Q. So it had -- 20 A. I'll stipulate for the purpose of this 21 discussion that it's from sometime after November 22 of 2011. 23 Q. Late 2011, early 2012; is that fair? 24 A. Let's see where we can go with that. If 25 it turns out to be false, I'm sure that the</p>	<p style="text-align: right;">382</p> <p>1 has the advantage of being a powerful established 2 brand. Indeed WWE was strong enough to foreclose 3 UFC content from getting broadcast on the USA 4 Network." Do you see that? 5 A. I see the sentence, yes. 6 Q. So Zuffa's lawyers were telling the FTC in 7 or about early 2012 that the WWE was perfectly 8 positioned to enter the market for MMA promotion, 9 right? 10 MR. WIDNELL: Objection, misstates. 11 BY THE WITNESS: 12 A. Well, I don't know who -- who wrote this 13 paragraph. I'll accept your representation that it 14 was somebody and those are the -- those are the 15 words, "Perfectly positioned to enter MMA 16 promotion." 17 Q. You don't know whether Zuffa's lawyers 18 wrote this document? You cited it. 19 A. This is Axinn Veltrop Harkrider. I don't 20 know that they represented Zuffa in this. They 21 must have. So I'm just assuming that they did, but 22 I've never met those lawyers. 23 Q. Turn to page 1 of the document under 24 "Introduction." 25 A. Okay.</p>
<p style="text-align: right;">381</p> <p>1 gentleman to my left will have something to say 2 about it. 3 MR. WIDNELL: Just for the record, you've 4 introduced a textbook that's dated 2018. 5 MR. CRAMER: It's true, we have. So there 6 was some time travel. 7 BY MR. CRAMER: 8 Q. All right. Please turn to page 10 of the 9 document. There's a caption under the number 7 10 that says "Other strong potential competitors are" 11 -- 12 THE REPORTER: I'm sorry. I'm having hard 13 time hearing. Can you start over? 14 MR. CRAMER: Yeah. 15 BY MR. CRAMER: 16 Q. There's a caption entitled "Other strong 17 potential competitors are particularly well poised 18 to enter." 19 MR. WIDNELL: Objection. 20 BY MR. CRAMER: 21 Q. And then it says "World Wrestling 22 Entertainment, WWE, is perfectly positioned to 23 enter MMA promotion. It already has ready access 24 to athletes and media outlets. Publicly traded 25 with a .7 billion market capitalization, WWE also</p>	<p style="text-align: right;">383</p> <p>1 Q. It says "This paper is respectfully 2 submitted on behalf of Zuffa, LLC"; do you see 3 that? 4 A. Yes. 5 Q. So this was submitted by lawyers working 6 on Zuffa's behalf, correct? 7 A. I assume that's who these people are, LLP, 8 and -- I don't know who these guys are. It says 9 it's respectfully submitted and it's being 10 submitted to the FTC I think. So I'm willing to 11 stipulate that it was submitted by somebody 12 representing the interests of Zuffa. 13 Q. And the paper in the first paragraph 14 references in footnote 3 a declaration of Andrew 15 Dick and Rodney Fort, correct? 16 A. Yes. 17 Q. Andrew Dick works for the same 18 organization that you work for, correct? 19 A. I believe he's a CRA employee. 20 Q. What is a CRA employee? 21 A. Charles River Associates. 22 Q. And you're associated with CRA? 23 A. Yeah. I'm a senior consultant there. 24 We're not in the same office. I don't interact 25 with Mr. Dick.</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">388</p> <p>1 Q. It was in early 2010, I believe March. 2 A. It doesn't matter for anything I've -- any 3 of my answers. 4 Q. Fair enough. 5 All right. In the next sentence you say 6 "Invicta has also succeeded by promoting only 7 women's MMA in five weight classes." 8 A. Yes. 9 Q. In your opinion, was Invicta a competitive 10 threat to the UFC? 11 MR. WIDNELL: Objection, form. 12 BY THE WITNESS: 13 A. My answer is the same. Invicta is another 14 firm in the business. So the totality of all the 15 firms in the market are substitutes for what UFC 16 offers. So if you look up there at the top, 17 Dr. Singer measures a market share, flawed and 18 overstated Zuffa's actual market share. This is 19 the point I was making before we took our break, 20 that -- that there's all kinds of firms recruiting 21 athletes and putting on events and they all aspire 22 to differentiate their product in just a little 23 way -- in some way just like the taco stand that we 24 talked about and they're competing. So I don't 25 have to think about a single firm as the</p>	<p style="text-align: right;">390</p> <p>1 the court reporter mark the next document as -- oh, 2 this is not the one I want. I'm sorry. Excuse me. 3 All right. I'd like to have the court reporter 4 mark as Exhibit 14 the next document. 5 (Topel Exhibit 14 was marked 6 as requested.) 7 BY MR. CRAMER: 8 Q. All right. Exhibit 14 that the court 9 reporter just marked is a two-page series of 10 e-mails bearing the Bates range ZFL-12535916 and 11 917. And the cover e-mail is from Kirk Hendrick to 12 John Mulkey dated November 21, 2013. Have you seen 13 this document before? 14 A. I might have. I recognize names. 15 Q. Mr. Mulkey is the UFC's CFO; is that 16 right? 17 A. That's my recollection, yes. 18 Q. And Kirk Hendrick was one -- was the UFC's 19 general counsel at one time? 20 A. I don't remember that, but that could 21 be -- I'll accept that for the purpose of this 22 discussion. 23 Q. He was an executive at the UFC; is that 24 right? 25 A. That's my recollection.</p>
<p style="text-align: right;">389</p> <p>1 competitive constraint on what Zuffa does or on 2 what other firms do, what Bellator does. It's the 3 integral, if you will, the totality of it that 4 matters. As I said, there are thousands of events 5 going on across the country and across the world in 6 this sport. 7 Q. All right. I move to strike that as 8 nonresponsive. 9 You know that Invicta's president 10 cooperates with the UFC and releases its fighters 11 to the UFC, correct? Or at least did at one 12 time. 13 MR. WIDNELL: Objection, form. 14 BY THE WITNESS: 15 A. I don't recall. 16 Q. Have you read documents in which the 17 executive in charge of Invicta told the UFC that it 18 would release its fighters to the UFC? 19 A. I don't recall. 20 Q. Do you know whether the UFC considers 21 Invicta a major league MMA promoter or a minor 22 league MMA promoter? 23 A. I don't recall. It doesn't matter to my 24 opinions. 25 MR. CRAMER: All right. I'd like to have</p>	<p style="text-align: right;">391</p> <p>1 Q. And he was there for a very long time, 2 correct? 3 A. I don't know how long he was there. 4 Q. All right. Mr. Mulkey -- Mr. Hendrick says 5 to Mr. Mulkey in the e-mail at the top of the page 6 "I think Lorenzo and Dana are trying to help her 7 out and trying to keep the women's minor league 8 intact." Now, Lorenzo is Lorenzo Fertitta and Dana 9 is Dana White and the "her" is Shannon Knapp who 10 runs Invicta. 11 Is it fair to say that if I represent to 12 you -- if you accept my representations about those 13 things that Mr. Hendrick at least believed that the 14 UFC believed that Invicta was a minor league? 15 MR. WIDNELL: Objection, form. 16 BY THE WITNESS: 17 A. Who -- wait a minute. You're saying who 18 believed what? Say that again. 19 Q. That Hendrick -- 20 A. Hendrick is writing this thing? 21 Q. Yes. 22 A. He says "I think Lorenzo and Dana are 23 trying to help her out and trying to keep the 24 women's minor league intact." 25 Q. Yes.</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">392</p> <p>1 A. Okay.</p> <p>2 Q. And assuming that this refers to Invicta</p> <p>3 and the "her" is Shannon Knapp who ran Invicta,</p> <p>4 it's fair to say that someone at the UFC believed</p> <p>5 that Invicta was the women's minor league.</p> <p>6 MR. WIDNELL: Objection, form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I mean, the person who believes that might</p> <p>9 have been her in this sentence, but I acknowledge</p> <p>10 that women's minor league is in the sentence.</p> <p>11 Q. Is it fair to say that Zuffa purchased</p> <p>12 Invicta's entire straw weight division?</p> <p>13 THE REPORTER: Straw?</p> <p>14 MR. CRAMER: Straw weight, S-T-R-A-W.</p> <p>15 BY THE WITNESS:</p> <p>16 A. I believe that that's true.</p> <p>17 Q. Do you know one way or another whether</p> <p>18 Zuffa believed that Invicta was in essence a</p> <p>19 women's minor MMA league?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Beyond this I have no recollection of</p> <p>23 whether they -- somebody there, everybody there, or</p> <p>24 whether Invicta thought they were a women's minor</p> <p>25 league. I just don't know.</p>	<p style="text-align: right;">394</p> <p>1 A. Okay.</p> <p>2 Q. Have you seen any evidence that any of the</p> <p>3 fighters you discuss in paragraph 74, 75, or 76</p> <p>4 that Zuffa wanted to keep any of them?</p> <p>5 A. I haven't -- I haven't examined the</p> <p>6 details of any negotiations between the fighters or</p> <p>7 their agents and Zuffa representatives.</p> <p>8 Q. Are you aware that Zuffa has told</p> <p>9 consultants like Deutsche Bank and others that it</p> <p>10 virtually never lost a fighter it wanted to keep?</p> <p>11 MR. WIDNELL: Objection, form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I wouldn't be surprised by that.</p> <p>14 Q. Why wouldn't you be surprised by that?</p> <p>15 A. Because it's a very desirable place to be.</p> <p>16 You've pointed out already today that other smaller</p> <p>17 entities sometimes include an out clause in their</p> <p>18 contracts, in their multi-bout contracts that say</p> <p>19 that if you get an offer from Zuffa you can go</p> <p>20 there and that's got to be because the athletes are</p> <p>21 demanding it. Zuffa's a good place to go.</p> <p>22 MR. CRAMER: I'd like to have the court</p> <p>23 reporter mark as Exhibit 15 the next document.</p> <p>24 (Topel Exhibit 15 was marked</p> <p>25 as requested.)</p>
<p style="text-align: right;">393</p> <p>1 Q. Okay. You can put that aside.</p> <p>2 Turn to paragraph 74 of your report,</p> <p>3 please. In paragraph 74 through 76 you identify</p> <p>4 fighters who competed in UFC who then went on to</p> <p>5 compete for other MMA promotions; is that right?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Do you have any evidence that -- with</p> <p>8 respect to any of the fighters that you discuss in</p> <p>9 these paragraphs that Zuffa wanted to keep them?</p> <p>10 A. You mean do I have some e-mail that says</p> <p>11 we want to keep this person? No. Only that</p> <p>12 they've gone on to fight elsewhere and they've --</p> <p>13 they've -- they've demonstrated some success.</p> <p>14 Q. All right. So with respect to the</p> <p>15 fighters you identify in paragraph 74, 75, and 76,</p> <p>16 you don't know one way or another whether Zuffa cut</p> <p>17 the fighters and then they went on to have success</p> <p>18 at other promotions or whether Zuffa -- or whether</p> <p>19 these fighters went to other promotions against the</p> <p>20 will of Zuffa?</p> <p>21 MR. WIDNELL: Objection, form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Against the will of Zuffa?</p> <p>24 Q. Do you know when -- I'll withdraw the</p> <p>25 question.</p>	<p style="text-align: right;">395</p> <p>1 BY MR. CRAMER:</p> <p>2 Q. So Exhibit 15 is a document that was</p> <p>3 produced to us by Raine, R-A-I-N-E, and the top of</p> <p>4 the document is entitled "Produced in native format</p> <p>5 Basquiat" -- there's that word again -- "FV</p> <p>6 diligence tracker"; do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it bears the Bates No. Raine,</p> <p>9 R-A-I-N-E, 0020633.</p> <p>10 A. Yes.</p> <p>11 Q. Are you aware of what Raine is?</p> <p>12 A. I don't recall anything about Raine.</p> <p>13 Q. Raine was a consultants that did some work</p> <p>14 relating to the WME acquisition of Zuffa. Does</p> <p>15 that refresh your recollection?</p> <p>16 A. It doesn't refresh my recollection with</p> <p>17 respect to a name, but I would not be surprised if</p> <p>18 they -- they retained outside consultants for</p> <p>19 purposes of doing things.</p> <p>20 Q. All right. So this document is dated as</p> <p>21 of 6/15/2016 and it's basically a spreadsheet where</p> <p>22 there are various columns. The first column is</p> <p>23 "Diligence request," presumably by Raine, and then</p> <p>24 on the right-hand column there's a "Formal</p> <p>25 response," presumably by Zuffa.</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">396</p> <p>1 So Raine is trying to get information 2 relating to Zuffa so that it can include it in its 3 evaluation of Zuffa for the WME. And I'd like you 4 to turn to page 14 of this document under item 204 5 and there's a diligence request from Raine. 6 "Athlete retention rate for fighter who have 3/5" 7 -- went three out of five -- "wins in his or her 8 five or seven bouts or other analysis angle 9 management used." And then if you look to the 10 right-hand column, Zuffa's formal response is, and 11 I quote, "Management does not have this analysis as 12 they do not view it as relevant. Reminder that no 13 athlete has left the UFC that the company wanted to 14 retain." Do you see that? 15 A. I see that. 16 Q. Yeah. And does that -- is that consistent 17 with your understanding of Zuffa's retention rate 18 with athletes? 19 MR. WIDNELL: Objection, form. 20 BY THE WITNESS: 21 A. I have no knowledge of any precise number 22 of Zuffa's retention rate. 23 Q. Can you identify -- 24 A. I will tell you that I've heard phrases 25 like this a thousand times at -- where I work that</p>	<p style="text-align: right;">398</p> <p>1 BY THE WITNESS: 2 A. Absolutely not. None of my colleagues who 3 say that are lying. They actually believe that we 4 didn't want to keep them and -- I mean, I have no 5 idea what the context for this is, I don't know who 6 wrote this. Maybe it's true that everybody who got 7 an outside offer and they decided that we'll let 8 them go or we cut them, we didn't want them. It 9 could be true. All I see is the words in front of 10 me and I've heard this in a lot of different 11 contexts. 12 Q. Someone in Zuffa wanted someone at WME who 13 was thinking of spending \$4 billion for Zuffa to 14 know that Zuffa never lost a fighter that Zuffa 15 wanted to keep, right? 16 A. Yes. And put that in the context of what 17 I just said. If the guy doesn't want to be part 18 of -- I could see how management says the people 19 who don't want to be here are the ones that we 20 don't want to keep because we're working on the 21 value of the brand. I'm not trying to argue with 22 you. I'm just trying to see this -- interpret what 23 this thing says in context. 24 Q. All right. You can put that aside. 25 Turn to paragraph 103, please. Actually,</p>
<p style="text-align: right;">397</p> <p>1 we've never let a faculty member go that we wanted 2 to keep, and often that means is he wanted to go so 3 we didn't want to keep him because, you know, he's 4 part of the specific capital here or he's not. So 5 we're kind of proud of ourselves where I work and a 6 lot of the guys take it as, hey, if he didn't want 7 to be here we didn't want him to be here. I've 8 heard these kinds of phrases a million times. It 9 doesn't mean anything here in the context of, oh, 10 we made guys an offer to stay and they left. I 11 don't know. 12 Q. Can you identify a single MMA fighter in 13 history that left the UFC that Zuffa wanted to 14 keep? 15 MR. WIDNELL: Objection, form. 16 BY THE WITNESS: 17 A. Well, I can't because I don't know whether 18 they wanted to keep them. 19 Q. And your testimony here is that when Zuffa 20 is responding to a diligence request from an entity 21 working for WME, Zuffa essentially lied when it 22 said "Reminder that no athlete has left the UFC 23 that the company wanted to retain"; is that your 24 testimony? 25 MR. WIDNELL: Objection, form.</p>	<p style="text-align: right;">399</p> <p>1 you don't need to look at 103. I'm going to ask it 2 separately from 103. I don't think 103 helps for 3 you to understand the question. 4 All right. I'd like you to assume for 5 purposes of this question that a fighter under 6 contract with the UFC no longer wants to be 7 promoted by the UFC. Understand? 8 A. Okay. 9 Q. Assume also that with respect to this 10 particular fighter the UFC did not want the fighter 11 to compete with another MMA promotion, it wanted to 12 re-sign the fighter. Is that fair as an 13 assumption? 14 MR. WIDNELL: Objection, form. 15 BY THE WITNESS: 16 A. That could happen. 17 Q. Okay. In that circumstance in order for 18 the fighter to be able to compete for another MMA 19 promotion he or she would need to fulfill the terms 20 of his contract, correct? 21 A. That's my understanding. 22 Q. So in that circumstance one thing the 23 fighter would need to do is compete in all of the 24 bouts required under the promotional and ancillary 25 rights agreement that he or she signed, right?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">400</p> <p>1 MR. WIDNELL: Objection, form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Unless released by Zuffa, but I think</p> <p>4 we're -- I think we're understanding each other.</p> <p>5 Q. And if the fighter turned down any fight</p> <p>6 for some reason -- strike that.</p> <p>7 And another thing the fighter would need</p> <p>8 to do would be to reject any offers of a renewed</p> <p>9 agreement from the UFC before the final fight or</p> <p>10 fight, right?</p> <p>11 A. You mean they couldn't reup?</p> <p>12 Q. Right.</p> <p>13 A. Okay. I think I'm with you so far.</p> <p>14 Q. He would need to effectively tell the UFC</p> <p>15 that he no longer wanted to fight for the UFC while</p> <p>16 the UFC still had control over him and when and</p> <p>17 against whom and at what placement of the card his</p> <p>18 last fight or fights would be, right?</p> <p>19 MR. WIDNELL: Objection, form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I -- I don't know what he has to tell the</p> <p>22 UFC. If he doesn't want to be there he just</p> <p>23 doesn't sign a new contract.</p> <p>24 Q. Well, let's say the UFC comes to this</p> <p>25 fighter, as it frequently did I think you pointed</p>	<p style="text-align: right;">402</p> <p>1 Q. So he fights out the end of his term, he</p> <p>2 fights all of his bouts, and then in most of the</p> <p>3 promotional and ancillary rights agreements there's</p> <p>4 a 90-day period in which the fighter can only</p> <p>5 negotiate with Zuffa, right?</p> <p>6 MR. WIDNELL: Objection, form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. There is a 90-day negotiation period. I</p> <p>9 don't know when it starts in this particular</p> <p>10 instance because there's been -- because</p> <p>11 negotiations have already commenced.</p> <p>12 Q. All right. But presumably if there is</p> <p>13 such a period in the contract and the fighter</p> <p>14 wanted to leave, that fighter would need to wait at</p> <p>15 least the 90 days in order to leave, correct?</p> <p>16 MR. WIDNELL: Objection, misstates.</p> <p>17 BY THE WITNESS:</p> <p>18 A. I don't -- I don't know in this particular</p> <p>19 instance. Can this -- are we in the period where</p> <p>20 he's -- it would be interference for someone else</p> <p>21 to come along and put an offer before his agent or</p> <p>22 to talk to his agent and the whole thing?</p> <p>23 Q. Yes. That's the exclusive negotiation.</p> <p>24 Right.</p> <p>25 A. Okay. Well, but somebody can talk to his</p>
<p style="text-align: right;">401</p> <p>1 out in your report, before the last bout in his</p> <p>2 contract and says I have a new contract for you,</p> <p>3 it's got four more bouts, it will include higher</p> <p>4 compensation, sign it. In order for the fighter to</p> <p>5 leave the UFC he'd have to turn that down,</p> <p>6 correct?</p> <p>7 MR. WIDNELL: Objection, form.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Well, I don't know if he has to turn it</p> <p>10 down or not. The university puts a contract in</p> <p>11 front of me and I say I'm not signing it yet.</p> <p>12 Q. Okay.</p> <p>13 A. You know, it's a -- I don't know what the</p> <p>14 fuse is. I don't know anything about this</p> <p>15 negotiation so far except what you're telling me.</p> <p>16 Q. At minimum he would have to say I'm not</p> <p>17 signing it yet, correct?</p> <p>18 A. Yeah. He wouldn't sign it yet because you</p> <p>19 have -- you've assumed that he was really hoping to</p> <p>20 go somewhere else.</p> <p>21 Q. All right. And then the fighter would</p> <p>22 need to wait the 90 days for the exclusive</p> <p>23 negotiation period, right?</p> <p>24 MR. WIDNELL: Objection, form.</p> <p>25 BY MR. CRAMER:</p>	<p style="text-align: right;">403</p> <p>1 agent as I understand things, but he's -- I'm going</p> <p>2 to accept what you're saying. It might not be</p> <p>3 entirely accurate, but let's say that this is true.</p> <p>4 Q. Okay. So he would have to wait the 90</p> <p>5 days and then he gets into the one-year right to</p> <p>6 match period and under the conditions that I'm</p> <p>7 talking about where Zuffa wants the fighter and the</p> <p>8 fighter wants to leave, in order for that fighter</p> <p>9 to be free and clear that fighter would need to</p> <p>10 wait the 12 months of the right to match period in</p> <p>11 order to be sure that he could end up at another</p> <p>12 promotion, correct?</p> <p>13 A. No.</p> <p>14 Q. How could he end up at another promotion</p> <p>15 during the right to match period in a circumstance</p> <p>16 where Zuffa wanted to keep the fighter and the</p> <p>17 fighter wanted to leave?</p> <p>18 A. Oh, you're saying how does he move if --</p> <p>19 if Zuffa has the right to match?</p> <p>20 Q. Yes.</p> <p>21 A. You didn't say that. So he goes and he</p> <p>22 gets his offer from Bellator or his agent</p> <p>23 consummates the offer put before him by Bellator</p> <p>24 and he brings it to Zuffa and they've got, what, 15</p> <p>25 days to respond, and if they say we're matching</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">404</p> <p>1 those terms, then under his contract he fights for</p> <p>2 Zuffa. If they don't match all the terms that are</p> <p>3 in there, then he -- he goes somewhere else.</p> <p>4 Q. Now, in order to be sure to be able to be</p> <p>5 free and clear of Zuffa the athlete can't present a</p> <p>6 contract from a rival promoter because Zuffa could</p> <p>7 accept it, right?</p> <p>8 MR. WIDNELL: Objection, form.</p> <p>9 BY MR. CRAMER:</p> <p>10 Q. If I as an athlete want to leave Zuffa --</p> <p>11 A. Yes.</p> <p>12 Q. -- and I present Zuffa with a rival bid</p> <p>13 during the right to match period where Zuffa has</p> <p>14 the right to match, I risk --</p> <p>15 A. Has a right to match the material</p> <p>16 financial stuff?</p> <p>17 Q. Yes.</p> <p>18 A. Yes.</p> <p>19 Q. I risk Zuffa agreeing it, presenting it to</p> <p>20 me, and then I'm stuck with the Zuffa contract,</p> <p>21 right?</p> <p>22 A. Yeah. That's the contract I signed.</p> <p>23 Q. So the only way to be free and clear from</p> <p>24 Zuffa in a circumstance where the fighter wants to</p> <p>25 leave and Zuffa wants to keep him is to wait the 12</p>	<p style="text-align: right;">406</p> <p>1 period is Zuffa has the right to match within 15</p> <p>2 days of the guy presenting the contract. If the</p> <p>3 guy says after that tough luck, even though you</p> <p>4 matched these terms I still don't want to fight for</p> <p>5 you, I don't know how Zuffa responds to that</p> <p>6 circumstance.</p> <p>7 Q. That's not what I'm talking about.</p> <p>8 A. Okay.</p> <p>9 Q. All right. You understand that the time</p> <p>10 period with which Zuffa has the right to match is</p> <p>11 limited, it doesn't last forever, right?</p> <p>12 A. Oh, yes.</p> <p>13 Q. Okay. How long is it limited to?</p> <p>14 A. It's -- it's a -- it's a period where if I</p> <p>15 bring an offer in in a period of time, within that</p> <p>16 window -- this is my understanding. So correct me</p> <p>17 if I'm wrong. If the guy brings that offer in</p> <p>18 within that period of time, Zuffa has 15 days to</p> <p>19 match from the time the offer is presented.</p> <p>20 Q. Correct. And that window is a year,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if it starts on January 1, 2017,</p> <p>24 it ends on January 1, 2018, right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">405</p> <p>1 months where Zuffa has the right to match,</p> <p>2 correct?</p> <p>3 MR. WIDNELL: Objection, form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I don't -- I don't know if it's the -- if</p> <p>6 Zuffa has the right to match -- I don't know how we</p> <p>7 undo the right to match by waiting the 12 months.</p> <p>8 I don't know. I'm not familiar with that</p> <p>9 circumstance. I have -- I have the right to</p> <p>10 match.</p> <p>11 Q. For 12 months.</p> <p>12 A. I have the right to match. It happened</p> <p>13 within -- we said the day he brought the thing in,</p> <p>14 we said done. All right. They had 15 days to do</p> <p>15 it, right? Am I misunderstanding?</p> <p>16 Q. Assume that the right to match period</p> <p>17 starts on January 1, 2017.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. It starts on some date. We're</p> <p>20 going to assume it starts on January 1, 2017.</p> <p>21 Okay?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, the right to match period ends</p> <p>24 365 later, right?</p> <p>25 A. My understanding of the right to match</p>	<p style="text-align: right;">407</p> <p>1 Q. Okay. That's the window. If I bring a</p> <p>2 rival bid to Zuffa at any point during that</p> <p>3 window --</p> <p>4 A. Yes.</p> <p>5 Q. -- and I want to leave Zuffa I risk Zuffa</p> <p>6 matching and I can't leave, correct?</p> <p>7 A. If I abide by the terms of the contract as</p> <p>8 I understand it. Now, like I said, I don't know</p> <p>9 what Zuffa says if you say well you matched these</p> <p>10 terms and you didn't match those terms, so I want</p> <p>11 to go. And so I don't know how Zuffa responds in</p> <p>12 that sort of case. Maybe there's litigation, maybe</p> <p>13 there isn't. I don't know.</p> <p>14 Q. I don't -- is it fair to say that in order</p> <p>15 to avoid the risk of Zuffa agreeing to match a</p> <p>16 rival bid the fighter whose right to match period</p> <p>17 begins on January 1, 2017 would need to wait until</p> <p>18 January 1, 2018 when the right to match window</p> <p>19 expires?</p> <p>20 MR. WIDNELL: And just to be clear, your</p> <p>21 hypothetical assumes that Zuffa will do anything it</p> <p>22 can to try and maintain the fighter, right? It's</p> <p>23 not that Zuffa can change its mind and let the</p> <p>24 fighter go?</p> <p>25 MR. CRAMER: No. My question is in order</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">408</p> <p>1 to avoid the risk -- a fighter has a risk if he 2 brings a rival bid to Zuffa that Zuffa will match 3 it, right? 4 MR. WIDNELL: My point is you're assuming 5 that negotiations with Zuffa to move to a different 6 promotion are not a possibility in your 7 hypothetical as you've described it; is that right? 8 MR. CRAMER: I don't know what you're 9 saying. 10 MR. WIDNELL: So -- 11 BY THE WITNESS: 12 A. That was my question too. 13 Q. So what's your question? 14 A. My question was what he just said. 15 Q. I don't understand his question. 16 A. I don't know how Zuffa responds when the 17 guy makes it clear I don't want to work here 18 anymore, and you're assuming that -- that it's not 19 a negotiation process. So when you refer to "avoid 20 the risk," if you what you mean by "avoid the risk" 21 is just avoid the event occurring with some 22 positive probability that Zuffa will match this 23 offer -- 24 Q. Yes. 25 A. -- no matter how small that probability is</p>	<p style="text-align: right;">410</p> <p>1 Q. Cheick Congo. So Cheick Congo was 38 2 years old and time was precious to him and he said 3 to Zuffa, you know what, I want -- the management 4 said to Zuffa, you know what, can you release him 5 from the right to match, you guys don't intend to 6 sign him again -- 7 A. Can I see what you're reading? 8 Q. Sure. We'll mark it as the next exhibit. 9 10 (Topel Exhibit 16 was marked 11 as requested.) 12 BY MR. CRAMER: 13 Q. What's been marked as Exhibit 16 is a 14 two-page series of e-mails bearing the Bates range 15 ZFL-1000978 through 979. The top has an e-mail 16 from Lawrence Epstein to Michael Mersh CC'g Joe 17 Silva dated May 2nd, 2013. 18 A. Let me just read the document. 19 I guess I -- should I be reading this in 20 reverse order? 21 Q. Yes. 22 A. Does it begin at the -- okay. 23 Q. The first e-mail's at the bottom. 24 A. Okay. 25 Q. I'll walk you through it. The first</p>
<p style="text-align: right;">409</p> <p>1 and saying there's no discussion between agent and 2 everything that says, look, we're not working here 3 anymore even if -- no matter what. 4 Q. Yes. 5 A. Okay. Then, you know, maybe that's true 6 that you have to wait that long to avoid this thing 7 that you're calling risk, but it's predicated on 8 all the things that I just said because -- you 9 know, contracts -- contracts are contracts. They 10 don't -- they never, ever cover all contingencies, 11 and so those contingencies are always what leads to 12 negotiation. 13 Q. Have you seen documents in this case where 14 a fighter's representative said to Zuffa, look, you 15 don't intend to give us another contract, my guy 16 would like to go fight for another promotion, will 17 you release him from the right to match and Zuffa 18 said no? 19 A. There might be a case like that. There's 20 a lot of -- there's a lot of situations that I've 21 seen. 22 Q. Have you seen a situation regarding a 23 fighter named Congo? 24 A. Congo, that name rings a bell, but I can't 25 say that I recall the situation of Congo.</p>	<p style="text-align: right;">411</p> <p>1 e-mail at the bottom from -- 2 A. No. Let me walk me through it. So... 3 (Witness reviewing document.) 4 BY THE WITNESS: 5 A. So who's McGann? 6 Q. He is Congo Cheick's representative. 7 A. Okay. Thank you. 8 (Witness reviewing document.) 9 BY THE WITNESS: 10 A. Okay. Got it. So the answer is -- to 11 this question up at the top from Michael Mersh and 12 he's copying Silva and his answer is very short. 13 It says "No." 14 Q. Right. So what's going on here is Congo's 15 representative -- Congo Cheick's representative 16 says "Can you give me a position on Congo, his 17 contract's up, he has the nonnegotiation period, 18 but someone from the UFC released a position that 19 you guys would not be seeking to renew his 20 contract. Is he free of any obligation?" And then 21 Mersh says to McGann "I'm not aware of anyone from 22 the UFC releasing any position on Cheick. However, 23 the contract provisions concerning our right to 24 match we consider to be in effect. As a favor, 25 however, I will consult with Dana and Lorenzo and</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">412</p> <p>1 get back to you." And then Cheick's representative 2 says back to Mersh in May of 2013 "We're not asking 3 for anything, but if you guys are happy to cut him 4 loose, then we can start looking for stuff for him. 5 Mike, he's 38 and time is precious to him." And 6 then Mersh takes it up the chain to Epstein and 7 says "What are your thoughts on Congo? McGann's 8 asking they be outright released from the right to 9 match." And Mersh -- Mersh's answer -- I'm 10 sorry -- Epstein's answer to Mersh is "No." Is 11 that right? 12 A. Yes. 13 Q. So this is an instance of a fighter that 14 wanted to leave the UFC, the UFC didn't want him to 15 leave. Is it fair to say that in order for Cheick 16 to leave the UFC he would need to wait -- in order 17 to have no risk of being re-signed with the UFC 18 during the right to match period he would need to 19 wait the 12 months of the right to match period? 20 A. That may be -- 21 MR. WIDNELL: Objection, misstates. 22 MR. CRAMER: Go ahead. 23 BY THE WITNESS: 24 A. That may be the case under his contract. 25 Q. All right. You can put that aside.</p>	<p style="text-align: right;">414</p> <p>1 sit out from his chosen profession when he was 38 2 years old, correct? 3 MR. WIDNELL: Objection, form. 4 BY THE WITNESS: 5 A. I just don't know. 6 Q. Okay. You can put that aside. 7 Turn to paragraph -- 8 MR. CRAMER: Well, it's about 12:20. Why 9 don't we go off the record. 10 THE VIDEOGRAPHER: Going off the record at 11 12:22. 12 (Whereupon, at 12:22 p.m., the 13 deposition was recessed, to 14 reconvene at 1:00 p.m., this 15 same day.) 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">413</p> <p>1 A. Let me just point out if you -- the point 2 of the contract is to -- the point of any contract, 3 all contracts restrict, and this contract 4 restricts. And if you make a policy of releasing, 5 then the contract doesn't do what it's supposed to 6 do, which is all the things that I described in my 7 report. 8 Q. Well -- 9 A. Then it's not binding at all. 10 Q. Well, in this instance we have a situation 11 where Mr. Cheick -- where Zuffa doesn't want to 12 re-sign Mr. Cheick and doesn't want to have 13 Mr. Cheick fight anymore fights. So Zuffa doesn't 14 want to get anymore promotional -- anymore return 15 on its promotional investment. 16 A. Does it state that they're never going to 17 offer him anything? 18 Q. Do you know whether they offered him 19 another contract? 20 A. I don't know. 21 Q. You don't know one way or the other, do 22 you? 23 A. No. As I sit here, I don't know. 24 Q. It's possible that Zuffa used its right to 25 match period in its contract to force Mr. Cheick to</p>	<p style="text-align: right;">415</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 AFTERNOON SESSION 13 (1:13 p.m.) 14 THE VIDEOGRAPHER: We are going back on 15 the record at 1:13. 16 ROBERT TOPEL, 17 the witness at the time of recess, having been 18 previously duly sworn, was further examined and 19 testified as follows: 20 EXAMINATION 21 (Resumed) 22 BY MR. CRAMER: 23 Q. Now, we did touch on this a little 24 yesterday, but I just want to make sure the record 25 is clear. Would you agree with me that as the</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">416</p> <p>1 marginal revenue product of MMA fighters rises, event revenues rise, all things equal?</p> <p>2</p> <p>3 MR. WIDNELL: Objection, form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. You're not saying the other way around.</p> <p>6 Is it -- is it like something that causes marginal</p> <p>7 revenue product to rise -- I mean, it doesn't have</p> <p>8 to come through events. So -- I mean, I -- we're</p> <p>9 selling stuff, all kinds of things. The marginal</p> <p>10 revenue product of a fighter is conceptually adding</p> <p>11 a fighter to the group of other fighters and all</p> <p>12 the other resources that the firm has and how much</p> <p>13 revenue goes up. Whether that's realized in event</p> <p>14 revenue I don't know and so -- an increase in the</p> <p>15 revenues of the firm attributable to fighters would</p> <p>16 cause the marginal revenue product of any given</p> <p>17 fighter to be higher.</p> <p>18 Q. So, all things equal, increase in event</p> <p>19 revenues would cause the marginal revenue product</p> <p>20 of any given fighter to rise; is that right?</p> <p>21 A. No. No. I mean, revenues can increase</p> <p>22 without for any given fighter his marginal revenue</p> <p>23 product going up.</p> <p>24 Q. The collective marginal -- the collective</p> <p>25 marginal revenue product of MMA fighters generally,</p>	<p style="text-align: right;">418</p> <p>1 equilibrium. Let's talk about the short term.</p> <p>2 A. All you're saying -- when you say "short</p> <p>3 term," you're still talking about equilibrium.</p> <p>4 You're just telling me that you -- what you want to</p> <p>5 assume now is that supply's kind of inelastic in</p> <p>6 the marketplace.</p> <p>7 Q. Over the short run.</p> <p>8 A. Whatever run you want. Okay. Yeah.</p> <p>9 Q. With that assumption, with supply</p> <p>10 inelastic in the short run, is it fair to say that</p> <p>11 as fighter marginal revenue product increases, all</p> <p>12 things equal, you would expect event revenues to</p> <p>13 increase?</p> <p>14 A. Boy, now we're on -- if -- if -- I think I</p> <p>15 understand what you're asking. If that's the</p> <p>16 avenue through which marginal revenue product went</p> <p>17 up, then, I mean, it could.</p> <p>18 Q. Well, let's -- let's hold all revenue</p> <p>19 streams constant other than revenue streams --</p> <p>20 other than event revenue streams for this question.</p> <p>21 So the only revenues that -- strike that. I'll</p> <p>22 withdraw the question and move -- I'll withdraw</p> <p>23 that last question and move on.</p> <p>24 Would you agree that one determinant of</p> <p>25 event revenues is fighter marginal revenue product?</p>
<p style="text-align: right;">417</p> <p>1 is that a concept that makes sense to you? The</p> <p>2 productivity of MMA fighters increases for some</p> <p>3 reason.</p> <p>4 MR. WIDNELL: Objection, form.</p> <p>5 BY MR. CRAMER:</p> <p>6 Q. Let's say --</p> <p>7 A. I just need -- I just need to think what</p> <p>8 could be meant by the collective --</p> <p>9 Q. Let's say Zuffa over time invests</p> <p>10 resources in promoting its fighters so that they</p> <p>11 can bring in more event revenues over time.</p> <p>12 A. Well, this is something we did talk about</p> <p>13 in some detail yesterday, and some -- we even had a</p> <p>14 picture that we worked on yesterday. Do you</p> <p>15 remember that?</p> <p>16 Q. I do, yes.</p> <p>17 A. And there's a difference between the</p> <p>18 marginal revenue product of a fighter at any given</p> <p>19 level of fighters in equilibrium marginal revenue</p> <p>20 product of a fighter. So if the marginal revenue</p> <p>21 product of fighters in the industry went up but</p> <p>22 supply's highly elastic, you could have no change</p> <p>23 in the marginal revenue product of a fighter in</p> <p>24 equilibrium because employment expands and so on.</p> <p>25 Q. All right. Let's not talk about</p>	<p style="text-align: right;">419</p> <p>1 A. One -- we keep framing this in terms of</p> <p>2 marginal revenue product. One determinant of event</p> <p>3 revenues is the popularity and therefore, let's</p> <p>4 say, willingness to pay of customers to watch.</p> <p>5 Q. Okay. So one determinant of event</p> <p>6 revenues is the popularity and willingness of</p> <p>7 customers to pay to see fighters fight; is that</p> <p>8 right?</p> <p>9 A. Sure.</p> <p>10 Q. And is it also fair to say that --</p> <p>11 A. Again, given the -- I don't want to call</p> <p>12 it short run, but given the elasticity of supply of</p> <p>13 events.</p> <p>14 Q. Okay. And is it also fair to say that</p> <p>15 fighter compensation is in part determined by the</p> <p>16 willingness of people to spend money to watch</p> <p>17 fighters fight?</p> <p>18 A. It --</p> <p>19 MR. WIDNELL: Objection, form.</p> <p>20 BY THE WITNESS:</p> <p>21 A. Sorry. It depends on how elastic the</p> <p>22 supply of fighters is.</p> <p>23 Q. And if we make the same assumption for</p> <p>24 this question that there's an upward sloping supply</p> <p>25 curve, would you agree with me that fighter</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">420</p> <p>1 compensation is, in part, determined by the 2 willingness of people to pay to see fighters fight? 3 A. To the extent that we're talking about 4 things that change the demand for fighters and in 5 moving along a supply curve, then greater 6 willingness to pay downstream raises the demand for 7 fighters and compensation should rise to the 8 extent -- depending on the elasticity of supply of 9 fighters. 10 Q. So it's fair to say that both fighter 11 compensation and event revenues are both, in part, 12 determined by the willingness of individuals to pay 13 to see fighters fight; is that right? 14 A. Would you -- can you read that back? 15 Q. I'll say it again. That fighter 16 compensation and event revenues are both, in part, 17 determined by the willingness of people to pay to 18 watch fighters fight; is that fair? 19 A. Yeah, subject to the conditions I gave. 20 Q. Okay. 21 Turn to paragraph 200. Now, in paragraph 22 200 you're criticizing Dr. Singer's damages 23 analysis in part, and in particular in the fourth 24 line -- I'll read the whole sentence. You say "In 25 addition to failing to do any analysis of the</p>	<p style="text-align: right;">422</p> <p>1 context. So removing the restrictions makes it 2 more difficult to generate revenues. 3 Q. So, in your view, the challenged conduct 4 alters the amount of UFC's revenues and that would 5 in turn alter the total amount of dollars that 6 would be paid to UFC fighters in the but-for world, 7 right? 8 A. You're connecting things from all other 9 the place now. 10 Q. It's my job. 11 A. I know, and I'm -- my job is to listen 12 carefully. 13 Q. It is. 14 A. Zuffa's producing a product and it's 15 putting on what they call shows, and these -- the 16 challenged conduct here or the restrictions enable 17 them to increase the valuable of those shows and 18 produce a more valuable product. So when we talk 19 about holding revenues constant, you can't take -- 20 you can't take one piece away and leave the other 21 piece intact. 22 Q. So, in other words, when you're 23 determining damages you can't just assume that the 24 revenues would be what they were in the actual 25 world because the revenues, in your view, might be</p>
<p style="text-align: right;">421</p> <p>1 foreclosure share in the but-for world absent the 2 challenged conduct, Dr. Singer errs by assuming the 3 only change in the but-for world would be a 4 reduction in the foreclosure share and then 5 projecting the impact that would have on athlete 6 compensation as measured by share of revenues, 7 holding revenues constant." Did I read that right? 8 A. Ah, I'm trying to understand my own 9 language. I got it. 10 Q. All right. So one of the things you're 11 criticizing Dr. Singer for in his damages analysis 12 is holding revenues constant, right? 13 A. That's one of the things in here, yeah. 14 Q. In your view, in assessing the competitive 15 effects of the challenged conduct on UFC fighter 16 compensation, it's inappropriate, in other words, 17 it's not appropriate to hold revenues constant; is 18 that right? 19 MR. WIDNELL: Objection, form. 20 BY THE WITNESS: 21 A. The -- the point of that, if we read the 22 whole thing in context, is that I'm pointing out 23 that the -- there are procompetitive reasons for 24 the contractual provisions. I think this is, 25 again, a point we discussed yesterday in this</p>	<p style="text-align: right;">423</p> <p>1 less, right? 2 A. Yeah. If we took these things away from 3 the entire industry, the whole industry might be 4 less valuable. 5 Q. So it's not appropriate, in your view, to 6 hold revenues constant because the challenged 7 conduct alters the amount of UFC's revenues, right? 8 A. I'm trying to figure out where you're 9 going here, but that's a fact. If you're 10 holding -- he's holding revenues constant. 11 Q. Okay. And, in your view, it's not 12 appropriate in evaluating the total possible 13 damages to fighters in this case to use the amount 14 of revenues that UFC actually brought in in the 15 actual world, right? 16 MR. WIDNELL: Objection, form. 17 BY THE WITNESS: 18 A. Yes. Let me put it another way. You 19 referred to the pie yesterday and changing the 20 contract restrictions doesn't mean -- just mean 21 that the same pie is divided up in a different way. 22 Q. Okay. So your view is that if in the 23 but-for world we would expect the UFC to bring in 24 lower levels of revenues from their events, that 25 would likely lead to lower athlete compensation,</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">424</p> <p>1 right?</p> <p>2 A. Depending on how everything else plays</p> <p>3 out, yeah.</p> <p>4 Q. I mean, you say in paragraph 200 -- we</p> <p>5 looked at this before in the same paragraph on page</p> <p>6 88 -- "Lower revenues would likely lead to lower</p> <p>7 athlete compensation," right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So just so I understand, it's your</p> <p>10 view that in computing damages in this case the</p> <p>11 appropriate pool of total event revenues is the</p> <p>12 amount of event revenues that the UFC would have</p> <p>13 brought in in the but-for world, not the actual</p> <p>14 world; am I right about that?</p> <p>15 A. Well, I mean, I don't want you to sneak in</p> <p>16 some sort of back-handed endorsement of the way</p> <p>17 Dr. Singer's performing the whole exercise, that</p> <p>18 it's based on some division of some share of</p> <p>19 revenues because I think that's a major critical</p> <p>20 mistake.</p> <p>21 Q. All right. I'm not trying to sneak that</p> <p>22 in.</p> <p>23 A. Well, I just -- but I've got to be careful</p> <p>24 here because you're getting me to endorse some</p> <p>25 concept that's -- you know, endorsing some aspect</p>	<p style="text-align: right;">426</p> <p>1 constant in the actual world that is not an</p> <p>2 appropriate assumption?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And the reason why that's not</p> <p>5 appropriate is because what an economist should do</p> <p>6 in computing damages in an antitrust trust is take</p> <p>7 into account all of the differences that would</p> <p>8 occur in the but-for world, including the total</p> <p>9 amount of revenues available to pay damages, right?</p> <p>10 A. Well, you're assuming -- you're assuming</p> <p>11 the appropriateness in that statement of</p> <p>12 Dr. Singer's damage calculation that's based on a</p> <p>13 share of revenues, and I'm -- so I'll just put it</p> <p>14 in the context of his damage calculation, which is</p> <p>15 just wrong, even within that context if you assumed</p> <p>16 arguendo it was a way to calculate damages, you'd</p> <p>17 still have to take into account that the world's</p> <p>18 going to be different when those contract</p> <p>19 restrictions are removed.</p> <p>20 Q. Okay. Let's assume that we're talking</p> <p>21 about an economist that didn't use share in his or</p> <p>22 her damages analysis. They used wage level. So we</p> <p>23 don't have the share problem that I think we're</p> <p>24 getting hung up on. In that situation in</p> <p>25 attempting to compute the effect of challenged</p>
<p style="text-align: right;">425</p> <p>1 of a -- of a -- of an inappropriate procedure. But</p> <p>2 the only point I'm making here is that the value</p> <p>3 produced is going to be different in the but-for</p> <p>4 world than in the world we're in, and -- because,</p> <p>5 remember, my opinion is there aren't any damages.</p> <p>6 So what it means to calculate those damages by the</p> <p>7 procedures that Dr. Singer's using is kind of a --</p> <p>8 let's just put it this way, a very vague concept.</p> <p>9 Q. I understand you have your critiques of</p> <p>10 Dr. Singer's analysis. I'm just trying to</p> <p>11 understand the principles behind this particular</p> <p>12 criticism, and as I understand it the particular</p> <p>13 criticism is that to the extent Dr. Singer is</p> <p>14 assuming that revenues are constant in the actual</p> <p>15 world, that is not an appropriate assumption</p> <p>16 because what he should be focused on in computing</p> <p>17 damages are the revenues in the but-for world; is</p> <p>18 that right?</p> <p>19 A. Let's just say that you -- if I read back</p> <p>20 your entire sentence there, it was kind of long,</p> <p>21 and I just stopped with "because" -- I put a period</p> <p>22 before the "because" and if you'll read back what</p> <p>23 that says, I think I can agree with that</p> <p>24 statement.</p> <p>25 Q. Dr. Singer is assuming that revenues are</p>	<p style="text-align: right;">427</p> <p>1 conduct on compensation one would need to assess</p> <p>2 the total amount of revenues in the but-for world,</p> <p>3 not the actual world; is that right?</p> <p>4 MR. WIDNELL: Objection, form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Now I don't know -- where do revenues come</p> <p>7 into this now? We just took it out of the</p> <p>8 left-hand side. Maybe -- you know, if I wanted to</p> <p>9 do a proper analysis I might have to compute the</p> <p>10 market equilibrium in a world where revenues have</p> <p>11 changed, but for the purposes of some -- if all</p> <p>12 we're changing is the regression and saying we're</p> <p>13 going to put compensation on the left-hand side or</p> <p>14 the log of compensation on the left-hand side</p> <p>15 rather than the share of revenues of -- the wage of</p> <p>16 an athlete divided by event revenue, well, now</p> <p>17 revenues aren't in the model, correct? They just</p> <p>18 disappeared.</p> <p>19 Q. Well, let's say that the regression</p> <p>20 produced a percentage by which compensation was</p> <p>21 reduced as between the actual world and the but-for</p> <p>22 world. That's something that could happen with a</p> <p>23 regression, right?</p> <p>24 MR. WIDNELL: Objection, form.</p> <p>25 BY THE WITNESS:</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">428</p> <p>1 A. Let's suppose we had a case that -- let me 2 see if I can help you out or you can help me out or 3 we can help each other out. 4 Q. Good. 5 A. Suppose there's a regression of wages on 6 some all-agreed-upon conduct indicator. Okay? So 7 there's -- and there's a before and after. 8 Q. Okay. 9 A. And we say that wages were 2 percent lower 10 controlling for other stuff in the conduct period, 11 okay, and we're not doing anything about the -- 12 forget critiques of whether the conduct -- and 13 suppose it was a really good controlled experiment 14 before and after. 15 Q. Fair enough. 16 A. Then there's a 2 percent impact of the 17 conduct, okay, which, as I just said, we're all 18 going to agree that this is right -- the right way 19 to measure the conduct. 20 Q. Understood. 21 A. Then one would need the stipulation along 22 with that that the practices in question didn't 23 have some offsetting impact that would have raised 24 pay because -- but we have a before and after 25 that's the conduct period. So we've really taken</p>	<p style="text-align: right;">430</p> <p>1 A. For the experiment we just did, you know, 2 we controlled for growth and other stuff and it was 3 just the -- I think if we understand each other, 4 it's a 2 percent reduction in wages. So give them 5 2 percent of their wages. 6 Q. Let's say that the conduct in question had 7 another effect -- strike that. I get it. I'll 8 move on. 9 Paragraph 108, please. You state in 10 paragraph 108 on page 47 -- I think I have the 11 wrong paragraph here. Oh, I mean paragraph 109. 12 You quote or paraphrase something from 13 Dr. Singer. You say "As Dr. Singer notes, athletes 14 value the opportunity to develop their careers by 15 fighting against highly-ranked opponents and 16 audiences are drawn to fights among highly ranked 17 opponents"; do you see that? 18 A. Yes. 19 Q. Do you agree with Dr. Singer's 20 observation? 21 A. That people want to fight highly ranked 22 opponents? 23 Q. Yes. 24 A. Well, they want to fight highly-ranked 25 opponents when they think they're ready to fight</p>
<p style="text-align: right;">429</p> <p>1 that into account. 2 Q. So let's say in your example with the 3 well-specified regression showing a 2 percent 4 decrease in wages after when compared to before 5 that revenues were different in the after period 6 and the before period. Would you multiply the 2 7 percent times the amount of revenues that you 8 thought would be existing in the but-for world or 9 the amount of revenues that would be existing in 10 the actual world? 11 MR. WIDNELL: Objection, form. 12 BY THE WITNESS: 13 A. Okay. Well, see, you know, I didn't 14 succeed in getting us on the same page because you 15 just multiplied by revenues. So revenues just came 16 sneaking in through the back door. It was a 17 2 percent change in their pay, their compensation, 18 their salary. 19 Q. Okay. I understand. 20 A. Revenues is gone. 21 Q. All right. Understood. Okay. So do you 22 multiply, then, by the total amount of compensation 23 paid to the workers in the actual world or the 24 total amount of compensation you believe would have 25 been paid to the workers in the but-for world?</p>	<p style="text-align: right;">431</p> <p>1 highly-ranked opponents. 2 Q. And are audiences drawn to fights among 3 highly-ranked opponents? 4 A. I think -- I think ratings are higher. I 5 think there was some evidence that ratings are 6 higher when highly-ranked people fight against each 7 other. 8 Q. Do you agree that MMA fighters value the 9 ability to develop their careers by fighting 10 against highly-ranked opponents when they're ready 11 to fight them? 12 A. Yeah. I think that's why they sign up. 13 That's one of the reasons they sign up. 14 Q. Is it fair to say that a fighter can't -- 15 cannot advance in the rankings unless that 16 fighter's able to fight other fighters that are 17 ranked higher than them, right? 18 MR. WIDNELL: Objection, form. 19 BY THE WITNESS: 20 A. I don't think that's literally true, but 21 you don't have to fight somebody higher than you to 22 move up. 23 Q. But in order to substantially move up in 24 the rankings, all things equal, it would be better 25 for you to fight higher ranked fighters, correct?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">432</p> <p>1 MR. WIDNELL: Objection, form. 2 BY THE WITNESS: 3 A. Since I don't know exactly how the ratings 4 or the rankings happen, let's assume they're like 5 college football rankings, then you take into 6 account the types of opponents you've had and how 7 you did and somebody has a formula that tries to 8 take that into account. Same thing with golf 9 rankings and all sorts of things. 10 Q. All things equal, consumers will be 11 willing to pay more to see highly-ranked opponents 12 fight than lower-ranked opponents fight; is that 13 fair? 14 MR. WIDNELL: Objection, form. 15 BY THE WITNESS: 16 A. In every instance, no, but on average 17 probably yes. 18 Q. Higher ranked fighters, all things equal, 19 generate more revenues when they fight than 20 lower-ranked fighters, correct? 21 MR. WIDNELL: Objection, form. 22 BY THE WITNESS: 23 A. Not always, but on average that's probably 24 true. 25 Q. Turn to paragraph 96, please. In the</p>	<p style="text-align: right;">434</p> <p>1 platform that has been successful in attracting the 2 top athletes and that complementarity plays a 3 role. 4 Q. How do you define "significant share" as 5 you use that term in this sentence? 6 A. All other things equal, a firm that is 7 attracting the top athletes will see its share 8 among the top athletes rise. 9 Q. And that's because fighters generally have 10 an interest in competing against the best fighters, 11 right? 12 A. Well, that's part of it, but the 13 complementarity is there's more energy created when 14 you put the good fighters against each other. So 15 the -- the customers like that too. 16 Q. And those are the fights that would likely 17 lead to career advancement and higher compensation 18 ultimately, correct? 19 MR. WIDNELL: Objection, form. 20 BY MR. CRAMER: 21 Q. The ones with higher energy. 22 A. Broadly speaking. 23 Q. Broadly speaking, yes? 24 A. Broadly speaking, if I -- if I'm 25 successful against higher-ranked people, I will</p>
<p style="text-align: right;">433</p> <p>1 first sentence after the dash you state "There is a 2 natural tendency for a leading promoter to attract 3 a significant share of the top athletes?" 4 A. Yes. 5 Q. "This follows," you say, "from the 6 complimentarity of athlete talents in producing 7 high-quality bouts" -- 8 A. That's the point we just made. 9 Q. -- "and the desire among athletes to fight 10 against the best"; do you see that? 11 A. Yes. 12 Q. And you agree with that? 13 A. Yes. 14 Q. Can you please explain the natural 15 tendency for a leading promoter to attract a 16 significant share of the top athletes. What does 17 that mean? 18 A. It means that athletes -- their talents 19 are complementary, that the good athletes want to 20 be in the places where the -- where the other good 21 athletes are so they can fight them. And then 22 it's -- it's kind of a feedback system that you 23 attract some of the good athletes, they fight well, 24 it makes it more attractive for the other good 25 athletes, and so on. So Zuffa kind of runs a</p>	<p style="text-align: right;">435</p> <p>1 probably advance more and get paid more and so on, 2 as I understand the process. 3 Q. You can put that paragraph aside. 4 Would you agree with me that by 5 restricting fighter mobility used the challenged 6 contracts Zuffa's made it more difficult for other 7 MMA promotions to access UFC's top fighters, all 8 things equal? 9 A. No. 10 Q. Are you aware that Zuffa and banks working 11 with Zuffa have seen the challenged contracts and 12 describe the challenged contracts as barriers to 13 entry to rivals? 14 A. I think I know what you're -- to what you 15 are referring and I wouldn't characterize it that 16 way. 17 Q. All right. Would you take a look at what 18 has been marked as Exhibit 12. We marked it 19 earlier today. It was in the pile in front of you. 20 A. Exhibit -- 21 Q. 12. It is the -- 22 A. It's the Deutsche Bank? 23 Q. Correct. 24 A. What page do you want? 25 Q. I would like you to turn to page 7 of the</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">436</p> <p>1 Deutsche Bank document.</p> <p>2 A. Yep.</p> <p>3 Q. It's entitled "Key Investment</p> <p>4 Considerations."</p> <p>5 A. Yes.</p> <p>6 Q. And then there's boxes of highlights and</p> <p>7 I'd like you to look at the second highlight on the</p> <p>8 left. Do you see what that says?</p> <p>9 A. I see it.</p> <p>10 Q. What does it say?</p> <p>11 A. The left-hand box?</p> <p>12 Q. Yes.</p> <p>13 A. It says "High barriers to entry."</p> <p>14 Q. And then if you look at the third bull- --</p> <p>15 bullet to the right of the "High barriers to entry"</p> <p>16 highlight, one of the rationales is "Vast majority</p> <p>17 of top fighters under multi-fight exclusive</p> <p>18 contracts"; do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So Deutsche Bank and Zuffa's executives</p> <p>21 who put this document together for people who are</p> <p>22 interested potentially in loaning money to Zuffa</p> <p>23 wanted to convey that they saw the fact that Zuffa</p> <p>24 had the vast majority of top fighters under</p> <p>25 multi-fight exclusive contracts as a high barrier</p>	<p style="text-align: right;">438</p> <p>1 Q. It's fair to say that it says more than --</p> <p>2 it refers more to than -- strike that.</p> <p>3 It refers more to than merely that Zuffa</p> <p>4 has the vast majority of top fighters. It says</p> <p>5 that Zuffa has the vast majority of top fighters</p> <p>6 under multi-fight exclusive contracts, right?</p> <p>7 A. Yes.</p> <p>8 Q. What work is multi-fight exclusive</p> <p>9 contracts doing in that bullet point?</p> <p>10 A. First of all, I said that. So -- they have</p> <p>11 -- that's because they have them under multi-fight</p> <p>12 exclusive contracts and that makes it valuable</p> <p>13 because I can be guaranteed that when I go to Fox</p> <p>14 and I sell the television rights to be -- to be --</p> <p>15 to UFC fights, I know who's going to be there in</p> <p>16 the future because, you know, you're going to be</p> <p>17 committing to a five-year, seven-year, ten-year, I</p> <p>18 can't remember how long the Fox deal is, and they</p> <p>19 can look at the stock they have now and say, yeah,</p> <p>20 well, most of those guys -- not even most -- will</p> <p>21 be here for three or four years. That's a valuable</p> <p>22 thing when you're selling those rights and that's</p> <p>23 what the -- that's what the audience here, which is</p> <p>24 Fox, they're going to be interested in that.</p> <p>25 Q. Well, the audience of this document are</p>
<p style="text-align: right;">437</p> <p>1 to entry; is that right?</p> <p>2 MR. WIDNELL: Objection, form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Well, let's just go over barriers to</p> <p>5 entry. First of all, economists and others use the</p> <p>6 term "barriers to entry" in -- in different ways.</p> <p>7 So to an economist a cost advantage, being better</p> <p>8 at something can be considered a barrier to entry.</p> <p>9 It's not an anticompetitive barrier to entry, but</p> <p>10 it's a barrier to entry because entrants are less</p> <p>11 likely to be successful. So in exactly the way I</p> <p>12 talked about a minute ago, because of this</p> <p>13 complementarity we were talking about, having the</p> <p>14 vast majority of top fighters, whether vast --</p> <p>15 whatever vast means there, under -- under your</p> <p>16 contracts, whether they be multi-fight contracts or</p> <p>17 what, if people want to be there together, that</p> <p>18 creates a -- an advantage, a competitive advantage</p> <p>19 that, all other things the same, make -- an</p> <p>20 entrant's going to have to overcome that in order</p> <p>21 to come in and compete head-to-head and have the</p> <p>22 same success as Zuffa. That's all it says.</p> <p>23 Q. Well, it's doesn't --</p> <p>24 THE REPORTER: Hang on one second.</p> <p>25 BY MR. CRAMER:</p>	<p style="text-align: right;">439</p> <p>1 people who are thinking of lending UFC up to a</p> <p>2 hundred million dollars, right?</p> <p>3 A. Well, yeah, but what's that got to do with</p> <p>4 it?</p> <p>5 Q. Well, one of the things that people who</p> <p>6 might want to lend a company money would want to</p> <p>7 know is whether that company is going to be able to</p> <p>8 sustain its revenues into the future, correct?</p> <p>9 A. I think we just said the same thing.</p> <p>10 Q. Okay. And high barriers to entry don't</p> <p>11 merely mean that Fox is willing to give me a</p> <p>12 long-term contract. It also means that it would be</p> <p>13 difficult for another MMA promoter to get access to</p> <p>14 the top fighters that I have under multi-fight</p> <p>15 exclusive contracts, right?</p> <p>16 MR. WIDNELL: Objection, form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Well, first of all, not all at once they</p> <p>19 couldn't get them. They can't just sign all of the</p> <p>20 fighters on the same day.</p> <p>21 Q. Correct.</p> <p>22 A. But every year a substantial number of</p> <p>23 fighters are coming off contract and they're open</p> <p>24 to competition from others.</p> <p>25 Q. The document doesn't say that, does it?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">440</p> <p>1 A. But this is referring to the stock of 2 fighters they have under contract in the actual 3 world in which we live. That doesn't contract -- 4 that doesn't contradict this.</p> <p>5 Q. Turn to page 31 of this --</p> <p>6 A. People are -- just let me finish. People 7 are coming off of contract and they're open to 8 other competitors. That's the way the whole thing 9 is set up.</p> <p>10 Q. Turn to page --</p> <p>11 A. 31?</p> <p>12 Q. -- 31. Page 31 has a heading 13 "Competition" and the first sentence reads "To 14 effectively compete with the UFC a competitor would 15 need proper infrastructure, substantial content to 16 market upcoming fights, effective television 17 distribution, a deep lineup of marquee fighters, 18 and adequate resources to satisfy the costs of a 19 UFC-level production"; do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have any basis to disagree with 22 that?</p> <p>23 A. No. I think it's consistent with what I 24 just said.</p> <p>25 Q. If you look down into the second</p>	<p style="text-align: right;">442</p> <p>1 investment, the barriers are not high to coming in 2 and in the long term making such an investment.</p> <p>3 Q. So when Zuffa and Deutsche Bank were 4 representing to potential lenders who might loan 5 them up to a hundred million dollars that there 6 were high barriers to entry, were they misleading 7 the public and their potential lenders?</p> <p>8 MR. WIDNELL: Objection to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I -- I just referred to the first mover 11 advantage and that is in a technical sense to an 12 economist a cost advantage, it's a barrier to 13 entry. It's something that makes entry more 14 difficult. So all of these things. The simple 15 fact that for procompetitive reasons they got the 16 majority of fighters fighting under their banner, 17 isn't anticompetitive and, yes, it makes it more 18 difficult for somebody to come in de novo and get a 19 bunch of fighters all at once.</p> <p>20 MR. CRAMER: All right. I'd like to show 21 you -- or have marked as Exhibit 17 the next 22 document.</p> <p>23 (Topel Exhibit 17 was marked 24 as requested.)</p> <p>25 BY MR. CRAMER:</p>
<p style="text-align: right;">441</p> <p>1 paragraph, in the second sentence Deutsche Bank 2 writes "Substantial capital would also be required 3 for a competing organization to attract the talent 4 necessary to stage a successful event. While good 5 matchmaking from a deep roster of talented fighters 6 under contract is essential"; do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have any basis to disagree with 9 that?</p> <p>10 A. No. It's going to take capital and modern 11 capital markets are remarkably good at raising 12 capital when there's a profit opportunity to be 13 had. So that would seem to be a true statement. 14 In fact, Deutsche Bank is pretty good at finding 15 people who would like to get a little bit higher 16 return if the opportunity is there. And let me 17 just point out that that thing says "Good match 18 making from a deep roster of talented fighters." 19 "Good match making from a deep roster of talented 20 fighters." So when they come in, just as Zuffa did 21 at the beginning -- and no one is going to deny 22 there's a first mover advantage for Zuffa, but if 23 you want to come in and compete, hey, maybe you're 24 going to lose money for a little while, but if the 25 opportunity's there, the present value of such an</p>	<p style="text-align: right;">443</p> <p>1 Q. Exhibit 17 is a two-page series of e-mails 2 bearing the Bates range WME-Zuffa-00013978 through 3 979. The cover e-mail is from Brent Richard to 4 Al Pfizenmaier and its subject is "Risks and 5 mitigants" and it's dated --</p> <p>6 A. I'm a little confused. This one says it's 7 from Brent Richard to Brent Richard. So...</p> <p>8 Q. -- and it's dated March 20, 2016. There's 9 an e-mail at the bottom that he must have been 10 sending it to himself --</p> <p>11 A. That's my --</p> <p>12 THE REPORTER: One at a time, please.</p> <p>13 THE WITNESS: Sorry.</p> <p>14 BY MR. CRAMER:</p> <p>15 Q. Do you know who Brent Richards is?</p> <p>16 A. It says here he's the global head of M&A 17 at WME and IMG.</p> <p>18 Q. Okay. And you've seen this document 19 before, right?</p> <p>20 A. Yeah, I probably saw this. I've seen 21 thousands of documents.</p> <p>22 Q. Well, you rely upon it in your footnote 46 23 and 407; is that right?</p> <p>24 A. Let's take a look at it, footnote 46 and 25 407. What is this supporting -- okay. Okay. And</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">444</p> <p>1 then what's the other footnote?</p> <p>2 Q. 407.</p> <p>3 A. Okay. Somewhere on there -- there it is.</p> <p>4 Okay. Same quote. It appears twice.</p> <p>5 Q. Okay.</p> <p>6 A. Yes.</p> <p>7 Q. So you -- you believe this document is a</p> <p>8 reliable source of information about Zuffa; is that</p> <p>9 fair?</p> <p>10 MR. WIDNELL: Objection, form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I believe that Dr. Singer quoted it in the</p> <p>13 context that it was used by him.</p> <p>14 Q. And you quote from it too, right?</p> <p>15 A. Well, I'm quoting -- didn't he quote that?</p> <p>16 Q. I'm sure that he did, and you did as well.</p> <p>17 A. That's his -- that's his quote. So I'm</p> <p>18 quoting him.</p> <p>19 Q. All right. Do you believe that this</p> <p>20 document is a reliable source of information</p> <p>21 regarding Zuffa's business practices?</p> <p>22 A. I think it's a reliable source of</p> <p>23 information for that quote that was provided by</p> <p>24 Dr. Singer.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">446</p> <p>1 that complementarity. So are there -- are there</p> <p>2 barriers to entry in the sense I have used the</p> <p>3 word, that somebody's in there that already has a</p> <p>4 cost and value advantage? Yeah. It's going to be</p> <p>5 more difficult for the second person to come in</p> <p>6 because of all those things.</p> <p>7 Q. And what -- one of the things that</p> <p>8 Mr. Richard refers to in addition to the first</p> <p>9 mover advantage that you referenced is that the UFC</p> <p>10 controls the best fighters on staggered contracts;</p> <p>11 am I right?</p> <p>12 A. "He controls the best fighters, on</p> <p>13 staggered contracts, and has the revenue model</p> <p>14 providing ability to pay fighters the most."</p> <p>15 Q. What does it mean to control the best</p> <p>16 fighters?</p> <p>17 A. They have the best fighters on their</p> <p>18 contracts -- many of the best fighters on their</p> <p>19 contracts. They are, he points out</p> <p>20 parenthetically, staggered contracts, which means</p> <p>21 that some fraction of those people are coming up</p> <p>22 every year, as I pointed out before. So if those</p> <p>23 people are on three-year contracts, roughly a third</p> <p>24 of the stock would be coming up and available for</p> <p>25 entrants. If they are on four-year contracts, it</p>
<p style="text-align: right;">445</p> <p>1 A. What -- what part are you pointing to?</p> <p>2 And then we can talk about it.</p> <p>3 Q. Let's look at the bottom of the first page</p> <p>4 of the e-mail from the WME executive under</p> <p>5 "Competition/barriers to entry"; do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Under the second bullet point it says</p> <p>8 "While technical barriers to entry to host a fight</p> <p>9 are relatively low, practically barriers to entry</p> <p>10 are extremely high. UFC controls the best fighters</p> <p>11 on staggered contracts and has the revenue model</p> <p>12 providing ability to pay fighters the most in the</p> <p>13 market by far." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Would you agree with Mr. Richards'</p> <p>16 statement that while technical barriers to entry to</p> <p>17 host a fight are relatively low, practical barriers</p> <p>18 to entry are extremely high?</p> <p>19 A. Well, no, because I don't know what he</p> <p>20 means by "extremely high." There's -- we've</p> <p>21 already established that UFC has a very successful</p> <p>22 business model. It's not easy to replicate a very</p> <p>23 successful business model, especially after there's</p> <p>24 a first mover, and I've said that they have a</p> <p>25 platform that attracts the best fighters because of</p>	<p style="text-align: right;">447</p> <p>1 would be 25 percent every year.</p> <p>2 Q. You're aware, as we looked at earlier</p> <p>3 today and yesterday, what the evidence shows is</p> <p>4 that the higher ranked a fighter is the longer term</p> <p>5 Zuffa has the contract for, correct?</p> <p>6 A. Yes.</p> <p>7 MR. WIDNELL: Objection, form.</p> <p>8 BY MR. CRAMER:</p> <p>9 Q. All right. You can put that --</p> <p>10 A. We looked at that -- we looked at that</p> <p>11 yesterday as well and I pointed out that's exactly</p> <p>12 what you'd expect from economics.</p> <p>13 Q. You can put that aside.</p> <p>14 A. Okay.</p> <p>15 Q. Turn to footnote 233 on page 72 of your</p> <p>16 report.</p> <p>17 A. Footnote 233?</p> <p>18 Q. Yeah. In the first sentence of footnote</p> <p>19 233 you say "It is worth noting that Dr. Singer</p> <p>20 weights all Zuffa athletes equally when he</p> <p>21 calculates his revenue-weighted foreclosure</p> <p>22 shares"; do you see that?</p> <p>23 A. Hold on. Let me read it in context.</p> <p>24 Okay?</p> <p>25 (Witness reviewing document.)</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">448</p> <p>1 BY THE WITNESS:</p> <p>2 A. Yes.</p> <p>3 Q. In your view -- and then you go on to say</p> <p>4 in that footnote, "In other words, if a headliner</p> <p>5 ranked in the top 15 departs Zuffa in the same</p> <p>6 month that Zuffa contracts with an unranked athlete</p> <p>7 with no record, Dr. Singer's revenue-weighted</p> <p>8 foreclosure shares will not change." Did I read</p> <p>9 that right?</p> <p>10 A. Yes, you did.</p> <p>11 Q. So, in your view, it is not appropriate to</p> <p>12 tread a headliner in the top 15 the same as</p> <p>13 unranked -- an unranked athlete with no record in a</p> <p>14 foreclosure analysis?</p> <p>15 A. First of all, I completely disagree with</p> <p>16 his foreclosure analysis. All I'm saying is it's a</p> <p>17 fact here. That's the way it works.</p> <p>18 Q. Is that appropriate or inappropriate, in</p> <p>19 your view, to treat a headliner in the top 15 the</p> <p>20 same as an unranked athlete with no record?</p> <p>21 MR. WIDNELL: Objection, form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. Are you asking whether it would be</p> <p>24 appropriate to give in some way greater weight to</p> <p>25 the fact that -- that a top-ranked athlete is</p>	<p style="text-align: right;">450</p> <p>1 A. It depends --</p> <p>2 MR. WIDNELL: Objection, form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. It depends on what the analysis is.</p> <p>5 Q. A foreclosure analysis for this case.</p> <p>6 A. Well, nobody's done such a foreclosure</p> <p>7 analysis in this case.</p> <p>8 Q. All right. Would you agree with me that</p> <p>9 not all fighters are exact substitutes for each</p> <p>10 other?</p> <p>11 A. I'll agree with that.</p> <p>12 Q. Would you agree with me that some fighters</p> <p>13 are more important to an MMA promotion than others?</p> <p>14 MR. WIDNELL: Objection, form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. Yes.</p> <p>17 Q. Some generate more revenues when they</p> <p>18 fight than others; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And those that are capable of generating</p> <p>21 more revenues when they fight, all things equal,</p> <p>22 are more valuable to their promotion than other</p> <p>23 fighters; is that right?</p> <p>24 A. The operative word there is generate, but</p> <p>25 go ahead.</p>
<p style="text-align: right;">449</p> <p>1 working for -- is under contract to Zuffa? Is that</p> <p>2 what you're asking?</p> <p>3 Q. Well, I'd like to know the answer to that</p> <p>4 question. All I'm asking is the logic behind your</p> <p>5 criticism of Dr. Singer in this footnote. You are</p> <p>6 saying that in his revenue-weighted foreclosure</p> <p>7 analysis he is treating a headliner in the top 15</p> <p>8 the same as an unranked athlete with no record, and</p> <p>9 I'm trying to understand why that is a critique of</p> <p>10 his model? In what sense is that problematic, if</p> <p>11 it is?</p> <p>12 A. It just -- this is the way it works. It</p> <p>13 just says this is worth noting.</p> <p>14 Q. So you don't think that's a problem with</p> <p>15 the model, treating a headliner in the top 15 the</p> <p>16 same as an unranked athlete with no record; is that</p> <p>17 right?</p> <p>18 A. Well, it doesn't do that in every period.</p> <p>19 It's just that this is the way it works within a</p> <p>20 period. So this is just a fact.</p> <p>21 Q. Let's say that there was a model that, in</p> <p>22 fact, did treat a headliner in the top 15 the same</p> <p>23 as an unranked athlete with no record as part of a</p> <p>24 foreclosure analysis. Would that be inappropriate,</p> <p>25 in your words -- in your view?</p>	<p style="text-align: right;">451</p> <p>1 Q. Is that right?</p> <p>2 A. It depends on how the particular fighter</p> <p>3 is -- is evaluated by the organization, but on</p> <p>4 average you'd rather have people who are capable of</p> <p>5 generating more revenue.</p> <p>6 Q. Would it be fair to say that, all things</p> <p>7 equal, the more a fighter is capable of generating</p> <p>8 revenue, all things equal, the more important it is</p> <p>9 for that promotion to ensure that that fighter</p> <p>10 cannot freely leave the promotion to go to another</p> <p>11 promotion?</p> <p>12 MR. WIDNELL: Objection, form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. That was a complicated question. Could</p> <p>15 you read it back, please.</p> <p>16 Q. Yeah. Is it fair to say that, all things</p> <p>17 equal, the more revenues a fighter is capable of</p> <p>18 generating for a promotion the more important it is</p> <p>19 for that promotion to ensure that that fighter does</p> <p>20 not freely leave the promotion to go to another</p> <p>21 promotion?</p> <p>22 A. Well, no --</p> <p>23 MR. WIDNELL: Same objection.</p> <p>24 BY THE WITNESS:</p> <p>25 A. -- depends on what we're paying them. I</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">452</p> <p>1 shouldn't have said we. I'm thinking about a 2 generic firm here. I've got somebody that's got a 3 high marginal product but I pay that person a lot. 4 You know, my incentive to retain that person 5 depends on how profitable that person is to me. So 6 if you change your question and say if this person 7 is really profitable to me would I rather not lose 8 them. 9 Q. Yes. 10 A. Yes. 11 Q. Turn to footnote 237, please, on page 74. 12 In the third sentence there -- you're talking about 13 a regression you did, and in the third sentence you 14 say "On the right-hand side of the regression I 15 include variables that measure the athlete's 16 ranking"; do you see that? 17 A. Let me read the footnote and stuff. 18 Q. Please do. 19 A. And actually -- okay. Here we go. 20 (Witness reviewing document.) 21 BY THE WITNESS: 22 A. Yes, now I've got to read 2 -- you want me 23 to read 237? 24 Q. Yes. I just want to -- I'm just going to 25 ask you why you include variables that measure the</p>	<p style="text-align: right;">454</p> <p>1 don't remember any documents that say we're going 2 to -- we think -- we think of weighting or we think 3 of ranking in the following way, but I guess I'd be 4 surprised if they weren't interested in that. 5 Q. Are you aware that state athletic 6 commissions use ranking in deciding whether or not 7 to approve fights that MMA promoters like Zuffa 8 propose to the commissions? 9 A. Let me just clarify. Are you -- first of 10 all, I'm not aware that they use ranking. Okay? 11 Q. Okay. Would that surprise you? 12 A. No. 13 Q. Why not? 14 A. I suppose it's because -- what immediately 15 came to mind, although this isn't part of my 16 opinion anywhere, I don't want to be thrown like me 17 in against some really accomplished guy, you know, 18 because I'm going to end up not feeling very good 19 at the end of it. 20 Q. And rankings would help determine whether 21 you, an unranked MMA fighter, and Conor McGregor 22 should be fighting against each other? 23 MR. WIDNELL: Objection, form. 24 BY THE WITNESS: 25 A. He could beat me with both hands tied</p>
<p style="text-align: right;">453</p> <p>1 athlete's ranking in this analysis. 2 A. Oh, because we want to control for the 3 attributes of the fighter and some measure of the 4 quality. 5 Q. And that's because, all things equal, it's 6 possible that an athlete's ranking would bear upon 7 its compensation? 8 A. Well, to put it more broadly, the -- when 9 we're comparing the compensation across time, we 10 want to do as much as we can to hold constant the 11 composition of the fighters in different years. 12 Q. Would you agree that an athlete's 13 ranking -- that, all things equal, the higher an 14 athlete's rank the higher a compensation he will 15 make? 16 MR. WIDNELL: Objection, form. 17 BY THE WITNESS: 18 A. That should -- did you say on average 19 something? 20 Q. On average. 21 A. I wouldn't be surprised if that's true. 22 Q. Do you know whether or not Zuffa uses an 23 athlete's ranking in considering how much to pay a 24 fighter? 25 A. I haven't looked. If I have looked, I</p>	<p style="text-align: right;">455</p> <p>1 behind his back. 2 Q. And probably both legs tied behind his 3 back. All right. 4 Turn to paragraph 165, please. So as I 5 understand what you're doing here, you're 6 stratifying athletes based on rankings; is that 7 right? 8 A. Yes. 9 Q. And your system weights fighters by 10 grouping. So you have fighters 1 to 15 in one 11 group and 16 to 30 in another and so on; is that 12 right? 13 A. Correct. 14 Q. What's your basis for this weighting 15 system? 16 A. Here I'm just doing it within categories 17 to show that within these categories for this 18 particular set of regressions that show growing 19 compensation over time -- I actually think we did 20 talk about this yesterday -- that within these 21 categories the same sort of pattern occurs. 22 Q. Is it fair to say that your weighting 23 system treats the champion as having the same 24 weight as the fighter ranked 15? 25 A. For this regression, yes. Well, I've</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">460</p> <p>1 when you run this regression you're going to get 2 that. Unless, as you say, they had some 3 mechanical -- another mechanical thing in there 4 that says every time our revenues go up by 10 5 percent we're going to increase compensation by 10 6 percent, okay, but we're doing a monopsony case 7 here where the allegation is that they reduce 8 compensation. So even if they didn't reduce 9 compensation, even if they didn't change it, even 10 if they increased it by some smaller amount, a bump 11 on this side is going to cause a reduction on this 12 side. It's kind of a teeter-totter.</p> <p>13 Q. Well, we did see documents yesterday where 14 Zuffa was assuming that its compensation of 15 athletes would go up at the same rate as the event 16 revenues grew, right?</p> <p>17 MR. WIDNELL: Objection, form, misstates. 18 BY THE WITNESS:</p> <p>19 A. I don't recall anything that said it's 20 going to rise at the same rate. The fact is it 21 doesn't.</p> <p>22 Q. And if it did, then there would be no 23 negative correlation between this foreclosure 24 measure and athlete's share of revenue, right?</p> <p>25 MR. WIDNELL: Objection, form.</p>	<p style="text-align: right;">462</p> <p>1 A. I was making a point about the comparative 2 advantage and success of Zuffa. So as Zuffa 3 becomes more successful relative to other firms -- 4 I think I even phrased it this way -- its 5 revenue-weighted share is going to rise.</p> <p>6 Q. But the mere fact that Zuffa's event 7 revenues are rising would not automatically cause 8 Zuffa's foreclosure shares to rise, right?</p> <p>9 A. If everybody's event revenues rose at the 10 same rate, that would leave Zuffa's -- what he 11 calls -- the share that Mr. Singer calculates 12 would -- if I recall correctly, would not change.</p> <p>13 Q. Turn to paragraph 227, please. You say 14 there in the first sentence "The conceptual flaw in 15 Dr. Singer's use of revenue weighted input shares 16 is further illustrated by the following 17 implication. Revenue weighted input shares imply 18 that firms with significant market power in the 19 output market also have a significant market 20 share -- or significant share of the input market." 21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And then you say a little bit further on 24 on page 98 "This result is not supported by the 25 economic literature which recognizes that firms</p>
<p style="text-align: right;">461</p> <p>1 BY THE WITNESS:</p> <p>2 A. Then you don't need a regression because 3 you just told me the share never changes. So 4 you're just putting a constant on the left-hand 5 side.</p> <p>6 Q. Assume for this question that Zuffa's 7 event revenues are increasing but at a slower rate 8 than event revenues at other MMA promotions. Okay?</p> <p>9 A. Okay.</p> <p>10 Q. In that instance, all things equal, 11 Zuffa's foreclosure share would fall, right?</p> <p>12 MR. WIDNELL: Objection, form. 13 BY THE WITNESS:</p> <p>14 A. So -- okay. So you keep the athletes the 15 same, but event revenues rise faster for others? 16 Yeah, that can happen.</p> <p>17 Q. So in order for Zuffa's foreclosure share 18 under the revenue-weighted measure to increase, 19 Zuffa must be earning a growing share of all MMA 20 event revenues, right?</p> <p>21 A. Yeah. I think that's the point we made in 22 our appendix.</p> <p>23 Q. So rising Zuffa event revenues does not 24 automatically cause Zuffa's foreclosure shares to 25 mechanically increase, right?</p>	<p style="text-align: right;">463</p> <p>1 with significant market power and share in an 2 output market can operate in and have a small share 3 of a highly competitive input market"; do you see 4 that?</p> <p>5 A. Yes.</p> <p>6 Q. It's fair to say you don't cite anything 7 for that proposition in this report, correct?</p> <p>8 A. Well, it's just -- you don't have to have 9 market power and inputs -- a firm that has market 10 power and inputs -- excuse me. A firm that has 11 market power and output doesn't -- for most of its 12 inputs doesn't have any market power. I mean, 13 Microsoft buys pencils. It doesn't have any 14 market -- if we stipulate that Microsoft has market 15 power in the output market for the operating 16 systems, it buys pencils competitively.</p> <p>17 Q. Now, you're not saying that it's 18 impossible for a firm with monopoly power in the 19 output market to have monopsony power in an input 20 market, are you?</p> <p>21 A. No.</p> <p>22 Q. You're just saying that the former, 23 meaning monopoly power in the output market, 24 doesn't necessarily imply the latter, monopsony 25 power in the input market, right?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">464</p> <p>1 A. Correct.</p> <p>2 Q. So assume for this question that there's</p> <p>3 an MMA promotion that has a monopoly on the</p> <p>4 promotion of professional MMA events. It's the</p> <p>5 only one. You would agree that by definition this</p> <p>6 is the only place an MMA fighter could get paid to</p> <p>7 compete as an MMA fighter, right?</p> <p>8 MR. WIDNELL: Objection, form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Yeah. I don't -- I don't disagree with</p> <p>11 that if they've got a monopoly. It takes -- it</p> <p>12 takes fighters in the output market to sell</p> <p>13 services and it takes fighters in the input market</p> <p>14 to get those services.</p> <p>15 Q. So it's fair to say that if you control</p> <p>16 the output market in a professional sport, you</p> <p>17 control the input market for the athletes that play</p> <p>18 that sport as well, correct?</p> <p>19 A. No. No. The input market for that --</p> <p>20 you've assumed that there are no good substitutes</p> <p>21 for the athletes themselves, and -- you know, I</p> <p>22 might be the -- let's pick a sport. I might be the</p> <p>23 monopolist on Major League Soccer in the United</p> <p>24 States, but I can still be hiring soccer players</p> <p>25 from everywhere and not have much market power over</p>	<p style="text-align: right;">466</p> <p>1 THE VIDEOGRAPHER: Going off the record at</p> <p>2 2:33.</p> <p>3 (A short break was had.)</p> <p>4 THE VIDEOGRAPHER: We are going back on</p> <p>5 the record at 2:35. This begins disk No. 4.</p> <p>6 BY MR. CRAMER:</p> <p>7 Q. So turn to paragraph 234 of your report,</p> <p>8 please. So here you specify a regression where you</p> <p>9 control for differences in athlete quality by</p> <p>10 calculating shares by ranking group; is that right?</p> <p>11 A. Yeah. So if you lead me read everything</p> <p>12 in context, I have to remember what I did.</p> <p>13 (Witness reviewing document.)</p> <p>14 BY THE WITNESS:</p> <p>15 A. Yes.</p> <p>16 Q. And one of the things you do that</p> <p>17 Dr. Singer didn't was you specify an athlete's rank</p> <p>18 as of the time the athlete joined the promoter; is</p> <p>19 that right?</p> <p>20 A. I don't recall phrasing it that way. By</p> <p>21 ranking group, dot dot dot. Are you referring to</p> <p>22 something in the footnote down here?</p> <p>23 Q. No. It's in paragraph 234, third line</p> <p>24 from the bottom of the paragraph.</p> <p>25 A. Oh.</p>
<p style="text-align: right;">465</p> <p>1 the price I pay for soccer players.</p> <p>2 Q. Let's say you're the global monopolist for</p> <p>3 soccer. You control it all. You control the</p> <p>4 output market for the sport. The only place that</p> <p>5 professional soccer players have to play is you,</p> <p>6 right?</p> <p>7 A. And if there's an inelastic supply of -- I</p> <p>8 mean, what's going to happen in the input market is</p> <p>9 that in that instance it depends on the elasticity</p> <p>10 of supply of soccer players and then --</p> <p>11 Q. In other words, whether players would come</p> <p>12 from some other sport or could go to another sport?</p> <p>13 A. Well, they could do all kinds of things.</p> <p>14 There's some elasticity of supply of soccer</p> <p>15 players. We know that's true, it's not zero. And</p> <p>16 so the pricing and I've got two decisions to make,</p> <p>17 how I operate in the input market and how I operate</p> <p>18 in the output market, and it's going to depend in a</p> <p>19 kind of a complicated way on the elasticity of</p> <p>20 demand in the output market and the elasticity of</p> <p>21 supply in the input market what ends up happening,</p> <p>22 the prices I charge and pay in two markets.</p> <p>23 THE VIDEOGRAPHER: Five minutes on disk.</p> <p>24 MR. CRAMER: Let's take a break and go off</p> <p>25 the record.</p>	<p style="text-align: right;">467</p> <p>1 Q. You say "Where an athlete's rank is as of</p> <p>2 the time the athlete joined a given promoter"; is</p> <p>3 that right?</p> <p>4 A. Yes. I see where you're point -- "Where</p> <p>5 an athlete's rank is as of the time the athlete</p> <p>6 joined a given promoter."</p> <p>7 Q. And you do that even if a fighter goes</p> <p>8 from rank 150 to champion while at that promoter;</p> <p>9 is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And so if the athlete joined the promoter</p> <p>12 as rank 150 and was a champion by the time you run</p> <p>13 the regression, he would still treat that athlete</p> <p>14 as if he was ranked 150; is that right?</p> <p>15 MR. WIDNELL: Objection, form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I'd have to check the code.</p> <p>18 Q. Well, assuming that's what you do, under</p> <p>19 your measure of foreclosure an MMA promotion could</p> <p>20 in theory have a hundred percent of the top ten</p> <p>21 fighters in every weight class with exclusive</p> <p>22 contracts and you still might not consider it as</p> <p>23 having a substantial foreclosure share, right?</p> <p>24 A. First of all --</p> <p>25 MR. WIDNELL: Objection, form.</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">468</p> <p>1 BY THE WITNESS:</p> <p>2 A. -- I'm not advocating this as a measure</p> <p>3 of foreclosure. I'm saying that Dr. Singer's --</p> <p>4 I've just recalculated some of the things that</p> <p>5 Dr. Singer did to show how they're sensitive to how</p> <p>6 things change. So in no way, shape, or form am I</p> <p>7 advocating any of these things as measuring</p> <p>8 anything to do with foreclosure.</p> <p>9 Q. Okay. But presumably you believe that</p> <p>10 measuring an athlete's rank as of the time the</p> <p>11 athlete joined the promoter is an appropriate</p> <p>12 adjustment, right?</p> <p>13 A. Given the problems with Dr. Singer's</p> <p>14 calculations, it's an adjustment that doesn't have</p> <p>15 the same problems that his does. So it's merely</p> <p>16 here to show the sensitivity of how things work.</p> <p>17 Q. Right.</p> <p>18 A. How things work in his -- in his world.</p> <p>19 Q. Right. But I'm just trying to test that</p> <p>20 adjustment, and it's fair to say that that</p> <p>21 adjustment would treat someone who is a champion in</p> <p>22 the analysis as if he was ranked 150 if the person</p> <p>23 joined the promotion at 150 and became a champion</p> <p>24 five years later.</p> <p>25 A. That can be true of this adjustment.</p>	<p style="text-align: right;">470</p> <p>1 they may have fought in the 18-month window around</p> <p>2 an event; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And you only count a fighter as foreclosed</p> <p>5 if he or she has at least one month remaining --</p> <p>6 A. Stop. I don't count fighters as</p> <p>7 foreclosed.</p> <p>8 Q. Okay. You only count a fighter as part of</p> <p>9 this measure if he or she has one month remaining</p> <p>10 in his contract or her contract?</p> <p>11 A. I don't recall. If we look back here --</p> <p>12 where do you see the one month?</p> <p>13 Q. So in the middle of paragraph 234 you say</p> <p>14 "As noted in the above, for a given month</p> <p>15 Dr. Singer's share calculation counts the number of</p> <p>16 athletes who participated in a bout for a given</p> <p>17 promoter for each month in an 18-month window</p> <p>18 around that month, which means some athletes are</p> <p>19 counted more than once. In my share calculation I</p> <p>20 count each athlete once."</p> <p>21 A. Yes, but that doesn't say anything about</p> <p>22 the last month.</p> <p>23 Q. Right. You don't recall one way or</p> <p>24 another whether you made that adjustment?</p> <p>25 A. We wouldn't have been calculating</p>
<p style="text-align: right;">469</p> <p>1 Q. All right. In Exhibit 28, if you turn to</p> <p>2 that, there, as I understand it, you calculate</p> <p>3 Zuffa's foreclosure share based on unweighted</p> <p>4 fighter counts within your stratified fighter</p> <p>5 categories, but otherwise leave Dr. Singer's</p> <p>6 methodology unchanged?</p> <p>7 A. Yes.</p> <p>8 Q. And then --</p> <p>9 A. That's my recollection.</p> <p>10 Q. Okay. And then in Exhibit 29 you impose</p> <p>11 certain of what you call corrections to</p> <p>12 Dr. Singer's foreclosure calculation that you</p> <p>13 mention in paragraph 234; is that right?</p> <p>14 A. Is this in -- in what line does it say</p> <p>15 Exhibit 29? Ah, overlays the recalculated, dot dot</p> <p>16 dot. Yep, it just shows that his revenue shares</p> <p>17 are -- or his -- his so-called foreclosure shares</p> <p>18 are sensitive to how they're defined.</p> <p>19 Q. So the difference between Exhibit 28 and</p> <p>20 Exhibit 29 is that Exhibit 29 you make the</p> <p>21 adjustments that you describe in paragraph 234; is</p> <p>22 that right?</p> <p>23 A. That's my recollection, yes.</p> <p>24 Q. Okay. So for Exhibit 29 you count</p> <p>25 athletes only once regardless of how many times</p>	<p style="text-align: right;">471</p> <p>1 somebody, in my recollection, in the last month</p> <p>2 because of their contract because -- well, for one</p> <p>3 reason, those people would be open to -- to being</p> <p>4 hired by somebody else.</p> <p>5 Q. So someone with one month left on their</p> <p>6 term would still have the 90 days of an exclusive</p> <p>7 negotiation period, correct?</p> <p>8 A. Sure.</p> <p>9 Q. And would have a 12-month right to match</p> <p>10 period, correct?</p> <p>11 A. Subject to all the caveats about the right</p> <p>12 to match period, yes.</p> <p>13 Q. All right.</p> <p>14 Now, you say in paragraph 234 that when</p> <p>15 you compare exhibits -- I'm sorry. In 235 you say</p> <p>16 at the bottom of page 100 "A comparison of Exhibit</p> <p>17 28 to Exhibit 29 shows that much of the difference</p> <p>18 between Dr. Singer's original shares and the</p> <p>19 recalculated shares is due to Dr. Singer's use of</p> <p>20 revenue weights"; do you see that?</p> <p>21 A. Yep.</p> <p>22 Q. And I'm trying to understand how you draw</p> <p>23 that conclusion from a comparison between</p> <p>24 Exhibits 28 and 29 given that the shares in both</p> <p>25 Exhibit 28 and 29 are not revenue weighted?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">472</p> <p>1 A. His are revenue weighed, the green line. 2 Q. Oh, the green line is revenue weighted? 3 A. Yeah. 4 Q. Okay. And that's what you mean? 5 A. Yeah. 6 Q. Okay. And just so I understand, in this 7 analysis you treat a fighter ranked 1 as the same 8 value as a fighter ranked 15; is that right? 9 A. Yes. 10 Q. For example, you would treat Nunez the 11 same as you treat Rousey; is that right? 12 A. I don't know whether I did that with those 13 two particular fighters, but within a category that 14 would be true. So we didn't inverse weight 15 according to -- we didn't treat 15 as 1/15th of 1. 16 Q. Okay. 17 Turn to paragraph 229. So here you 18 talk -- you point out that Nunez was the champion 19 when she fought Rousey in December of 2016; is that 20 right? 21 A. Yes. That's my recollection. 22 Q. And at that time Rousey was ranked 5th; is 23 that right? 24 A. Yes. 25 Q. And you point out further that Nunez</p>	<p style="text-align: right;">474</p> <p>1 Turn to paragraph 65, please. You say in 2 the second sentence on page 26 "In addition to the 3 athletes identified by Dr. Singer in his input 4 market definitions, MMA athletes have come from, 5 among other places, collegiate or Olympic 6 wrestling, boxing programs, martial arts, 7 academies, the military, and other professional 8 sports." Can you identify any top-ranked MMA 9 athletes that were also in the elite ranks of other 10 professional sports? 11 A. I haven't looked at the elite ranks of 12 other professional sports to see who moved over. I 13 know that an elite wrestler tried to move over and 14 got his butt kicked, but -- 15 Q. That's correct. 16 A. Yep. 17 Q. Can you identify any top-ranked MMA 18 athlete that was in any rank of another 19 professional sport? 20 MR. WIDNELL: Objection, form. 21 BY MR. CRAMER: 22 Q. Not an elite necessarily. Just someone 23 who played professional football, for example. 24 MR. WIDNELL: Same objection. 25 BY THE WITNESS:</p>
<p style="text-align: right;">473</p> <p>1 earned substantially less than Rousey for that 2 fight? 3 A. Yes. 4 Q. Do you know whether Nunez was fighting 5 that bout on a contract that had been signed before 6 Nunez became champion? 7 A. She could have been. 8 Q. Do you know whether Rousey was fighting 9 that rematch on a contract executed before Rousey 10 lost the championship to Nunez? 11 A. Well, since she's fighting Nunez since she 12 earned 3 million, it would have been a contract 13 before she fought Nunez. 14 Q. Do you understand that even in December 15 2016 Rousey had far more revenue-generating 16 potential than Nunez? 17 MR. WIDNELL: Objection, form. 18 BY THE WITNESS: 19 A. I think that's implied by what's in here, 20 yeah. 21 Q. The main reason that the fight had over 22 1 million Pay-Per-View buys is Rousey, not Nunez, 23 right? 24 A. Sure. 25 Q. All right. You can put that aside.</p>	<p style="text-align: right;">475</p> <p>1 A. Some of these guys -- some of these guys 2 played other sports, if that's your question, but 3 the facts of their background are that a lot of 4 people came over from other sports and they fight 5 in other sports. 6 Q. Would you agree with me that if -- all 7 things equal, if MMA fighter compensation generally 8 rose relative to the compensation in other 9 professional sports, more potential athletes that 10 would otherwise have gone into these other sports 11 would choose MMA instead? 12 MR. WIDNELL: Objection, form. 13 BY THE WITNESS: 14 A. I think that's likely. That's part of the 15 reason the sport itself has grown. 16 Q. Would you agree that the better -- strike 17 that. 18 That therefore, all things equal, if you 19 increase the compensation to MMA fighters generally 20 you'd attract more qualified athletes? 21 A. I think that's what's happened. 22 Q. And, all things equal, increased fighter 23 compensation -- 24 A. I don't know if the average would go up or 25 not. Depends on whether you pull in more</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">476</p> <p>1 high-ranked -- high-quality people or low-ranked</p> <p>2 quality people, but the profession would become</p> <p>3 more attractive relative to other professions.</p> <p>4 Q. And, all things equal, if you therefore</p> <p>5 increase fighter compensation relative to other</p> <p>6 sports, that would improve the quality of MMA for</p> <p>7 consumers, right?</p> <p>8 MR. WIDNELL: Objection, form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. There would be some effect there, yeah.</p> <p>11 Q. Turn to paragraph 209. In this paragraph</p> <p>12 you criticize Dr. Singer's use of the FightMetric</p> <p>13 database as part of one of his tracked measures of</p> <p>14 the relevant input market; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Can you identify by name or rank a single</p> <p>17 MMA fighter who was excluded from this database</p> <p>18 that you believe is appropriately in the relevant</p> <p>19 input market?</p> <p>20 A. I think we had some of those as examples.</p> <p>21 I can't remember the names. I don't keep track of</p> <p>22 fighters' names.</p> <p>23 Q. So you believe you've identified in your</p> <p>24 report fighters who are appropriately in the</p> <p>25 relevant input market but who are not measured by</p>	<p style="text-align: right;">478</p> <p>1 Q. Yeah. Can you identify any MMA promoter</p> <p>2 that was not in the FightMetric database that had</p> <p>3 or has a material share of the MMA promotion</p> <p>4 business?</p> <p>5 A. Well, if I don't have anybody in here,</p> <p>6 we've talked about the identities before, but I</p> <p>7 can't remember.</p> <p>8 Q. So sitting here today, you cannot identify</p> <p>9 a single MMA promoter with a material share of the</p> <p>10 MMA market that was not in the FightMetric</p> <p>11 database; is that right?</p> <p>12 MR. WIDNELL: Objection, form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I don't recall the names of the promoters</p> <p>15 that were not in there. I didn't keep track of</p> <p>16 that.</p> <p>17 Q. What business is FightMetric in, to your</p> <p>18 understanding in?</p> <p>19 A. My recollection is that FightMetric</p> <p>20 collects information on -- on bouts and that</p> <p>21 promoters may pay FightMetric to collect</p> <p>22 information on those bouts.</p> <p>23 Q. And Mr. Genauer who created it sells the</p> <p>24 data tracking MMA fighters and their records to MMA</p> <p>25 promoters; is that right?</p>
<p style="text-align: right;">477</p> <p>1 the FightMetric database; is that right?</p> <p>2 A. My -- if I recall, my FightMetric versus</p> <p>3 Fight Matrix databases, FightMetric was only</p> <p>4 certain promoters for whom FightMetric was paid to</p> <p>5 collect the information. So certain -- anybody who</p> <p>6 was in a -- who was at a point in time not in -- if</p> <p>7 that promoter was not in FightMetric, then they</p> <p>8 wouldn't have been counted at that point in time in</p> <p>9 the -- in the MMA market. Now, later on they might</p> <p>10 have got in.</p> <p>11 MR. CRAMER: For the court reporter there</p> <p>12 have been two words, FightMetric,</p> <p>13 F-I-G-H-T-M-E-T-R-I-C, and Fight Matrix, F-I-G-H-T,</p> <p>14 M-A-T-R-I-X.</p> <p>15 THE REPORTER: Thank you.</p> <p>16 MR. CRAMER: You're welcome.</p> <p>17 BY MR. CRAMER:</p> <p>18 Q. Can you identify a single MMA promoter</p> <p>19 that you believe was excluded from the FightMetric</p> <p>20 database that has or had a material share of the</p> <p>21 MMA promotion business?</p> <p>22 A. I'm sorry.</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. I'm sorry. Could you say that again.</p>	<p style="text-align: right;">479</p> <p>1 A. That's my recollection.</p> <p>2 Q. Did you speak to Mr. Genauer --</p> <p>3 A. No.</p> <p>4 Q. -- in the course of your work?</p> <p>5 A. No.</p> <p>6 Q. Do you know what MMA promoters use this</p> <p>7 information for that they pay for from Fight</p> <p>8 Matrix -- FightMetric?</p> <p>9 MR. WIDNELL: Objection, form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. To keep track of perform -- my</p> <p>12 recollection is to keep track of performance of</p> <p>13 athletes in the octagon.</p> <p>14 Q. And MMA promoters use the FightMetric</p> <p>15 database in tracking fighters as part of the</p> <p>16 regular course of their businesses, as far as you</p> <p>17 understand it; is that right?</p> <p>18 MR. WIDNELL: Objection, form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. Some do and some don't.</p> <p>21 MR. WIDNELL: Misstates.</p> <p>22 BY MR. CRAMER:</p> <p>23 Q. In paragraph 211 you quote Mr. Genauer,</p> <p>24 we've got a declaration from him; is that right?</p> <p>25 A. Well, I think this is a -- I can't</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">480</p> <p>1 remember. There's a dec -- we have a declaration 2 and then this is an exchange. Are you talking 3 about paragraph 211? 4 Q. Yes. I'm sorry. Yes. This was an 5 exchange -- 6 A. That's an exchange between Augie Urschel 7 at Economist, Inc. and Mr. Genauer. 8 Q. Right. I misspoke. 9 And in that exchange Mr. Genauer is 10 describing sort of who's in and who's out of 11 FightMetric, and he says "It's become whoever the 12 market is willing to pay for," right? 13 MR. WIDNELL: Objection, form. 14 BY THE WITNESS: 15 A. Yes. I mean, he says -- yeah. "In recent 16 years it has become whoever the market is willing 17 to pay for. I don't have a perfectly consistent 18 answer for you." 19 Q. In other words, Genauer tracks fighters in 20 this database that MMA promotions want to track in 21 the regular course of their businesses, right? 22 MR. WIDNELL: Objection, form, misstates. 23 BY THE WITNESS: 24 A. Well, it's whatever organizations pay him 25 to track.</p>	<p style="text-align: right;">482</p> <p>1 A. You just handed it to me. 2 Q. Well, you rely upon it in at least three 3 places in your report; isn't that right? 4 A. I'm sure it came from attorneys for Zuffa. 5 Q. You've seen it before, right? 6 A. I've read a lot of documents. This looks 7 familiar. 8 Q. Turn to paragraph 6 on page 1 of the 9 declaration, Exhibit 18. It says "FightMetric 10 determined which MMA promotions bouts to track for 11 the purposes of collecting statistical information 12 about the promotions' bouts. The decision was 13 influenced by factors such as the willingness of 14 third parties, including sports broadcasters, MMA 15 promotions, and fantasy sports gaming Websites to 16 pay for that information." Do you believe that 17 that's accurate? 18 A. Sure. I believe -- I've -- I've read that 19 paragraph before. 20 Q. So Mr. Genauer was attempting with his 21 FightMetric database to track the fighters and 22 promotions and bouts that third parties were 23 willing to pay for; is that right? 24 MR. WIDNELL: Objection, misstates. 25 BY THE WITNESS:</p>
<p style="text-align: right;">481</p> <p>1 Q. If MMA promotions had wanted Mr. Genauer 2 to track other fighters and were willing to pay for 3 it, presumably FightMetric would track those 4 fighters as well, correct? 5 MR. WIDNELL: Objection, form. 6 BY THE WITNESS: 7 A. Repeat the question, please. 8 Q. I'll withdraw the question. 9 A. Some promoters didn't pay. 10 MR. CRAMER: I'd like to mark as the next 11 exhibit the declaration of Abraham Genauer, 12 Exhibit 18. 13 (Topel Exhibit 18 was marked 14 as requested.) 15 BY THE WITNESS: 16 A. Is this Rommey's -- 17 THE REPORTER: Hold on, please. 18 BY THE WITNESS: 19 A. I take it this is Rommey's formal name? 20 Q. Well, this document was produced to the 21 Plaintiffs by Zuffa. It's signed by Abraham 22 Genauer. And it was executed October 26, 2017. 23 A. Got it. 24 Q. Do you know how this came into your 25 possession?</p>	<p style="text-align: right;">483</p> <p>1 A. Well, he doesn't say which way the 2 causality goes, if he went out and collected data 3 and said, hey, you want to buy this or whether 4 people said we'd like to retain you to go out and 5 do it. However he did it, it's not a random 6 sample. 7 Q. Right. Well, he said it was influenced by 8 the willingness of third parties to pay for it, 9 right? 10 A. Well, factors such as, yes. Go ahead. 11 Q. And it's fair to say that if third parties 12 were willing to pay for tracking fighters at other 13 promotions that he wasn't tracking, that he might 14 have gone out and tracked those fighters and 15 promotions as well, right? 16 MR. WIDNELL: Objection, form. 17 BY THE WITNESS: 18 A. You've said something that it's impossible 19 to disagree with. 20 Q. I like to hear that. 21 A. It has to happen once. 22 Q. Do you know what fantasy sports gaming 23 Websites do with regard to MMA? 24 A. I suppose they probably have fantasy bouts 25 and then people can participate.</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">484</p> <p>1 Q. And it's fair to say that if -- 2 A. That's my recollection. 3 Q. If these gaming Websites wanted to track 4 promotions and fighters that Mr. Genauer wasn't 5 tracking that he would go out and track them, 6 right? 7 MR. WIDNELL: Objection, form. 8 BY THE WITNESS: 9 A. Depends on how much they're willing to 10 pay. 11 Q. All right. You can put that aside. 12 Is it your opinion that MMA fighters could 13 easily substitute from professional mixed martial 14 arts to boxing? 15 A. No. 16 Q. Is it your opinion that MMA fighters could 17 easily substitute from MMA fighting to football? 18 MR. WIDNELL: Objection, form. 19 BY THE WITNESS: 20 A. You mean to NFL football? 21 Q. Yes. 22 A. No. 23 Q. Is it your opinion that MMA fighters could 24 easily substitute from MMA fighting to playing 25 tennis, professional tennis?</p>	<p style="text-align: right;">486</p> <p>1 Have you done any analysis of how much it 2 would cost to train to switch from professional MMA 3 fighting to another sport? 4 MR. WIDNELL: Objection, form. 5 BY THE WITNESS: 6 A. I've done no financial analysis of such 7 switching. 8 Q. Did you do any analysis of how much time 9 it would take for a professional MMA fighter to 10 switch from professional MMA to another sport? 11 A. My understanding it takes various amounts 12 of time. 13 Q. Would you agree that it takes a tremendous 14 amount of skill and training to be a top-level MMA 15 professional fighter? 16 MR. WIDNELL: Objection, form. 17 BY THE WITNESS: 18 A. I think it takes a lot of skill to be a 19 top athlete in any category. 20 Q. Is it fair to say that in order to be -- 21 in order to be a top-level professional MMA fighter 22 one would need to be an extraordinary athlete; is 23 that fair? 24 MR. WIDNELL: Objection, form. 25 BY THE WITNESS:</p>
<p style="text-align: right;">485</p> <p>1 MR. WIDNELL: Objection, form. 2 BY THE WITNESS: 3 A. No. 4 Q. Other than Conor McGregor, can you 5 identify another MMA fighter who became a 6 successful professional boxer for more than one 7 fight? 8 MR. WIDNELL: Objection, form. 9 BY THE WITNESS: 10 A. No. Are you counting him as successful? 11 Q. You can determine that. Was he 12 successful, in your opinion? 13 A. He made money. He lasted longer than I 14 would have thought. 15 Q. Did you in your report do an analysis as 16 to whether there are other combat sports to which 17 professional MMA fighters could switch if their 18 compensation fell a small but significant agree? 19 MR. WIDNELL: Objection, form. 20 BY THE WITNESS: 21 A. Whether -- whether there are other sports? 22 Q. Yes. 23 A. Well, they surely could switch to some 24 degree. The magnitude, I didn't calculate it. 25 Q. Have you done an -- strike that.</p>	<p style="text-align: right;">487</p> <p>1 A. They are athletic. Whether they're as 2 athletic as some other field, I don't know. 3 Q. Is it fair to say that in order to be a 4 top-level MMA fighter that athlete would need to be 5 knowledgeable about several martial arts 6 disciplines? 7 MR. WIDNELL: Objection, form. 8 BY THE WITNESS: 9 A. I think they use several martial arts 10 disciplines. That's why it's called mixed martial 11 arts. 12 Q. And in order to be a top-level MMA fighter 13 the athlete would need to be knowledgeable and 14 trained in more than one martial arts discipline, 15 correct? 16 MR. WIDNELL: Same objection. 17 BY THE WITNESS: 18 A. I suppose one could be successful using a 19 limited set of skills, but you say more than one. 20 You're probably able to use more than one. That's 21 why it's called mixed martial arts. 22 Q. Right. If a boxer tried to become a mixed 23 martial artist and all that professional boxer knew 24 was boxing, he would get his butt kicked, wouldn't 25 he?</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">488</p> <p>1 MR. WIDNELL: Objection, form. 2 BY THE WITNESS: 3 A. I don't know the answer to that. 4 Q. In order to be a professional MMA fighter 5 at the top level the athlete needs to be in 6 incredible shape; is that true? 7 MR. WIDNELL: Objection, form. 8 BY THE WITNESS: 9 A. Incredible shape? I mean, there's all 10 these adjectives flying around that -- it's rough 11 and tumble in that octagon and to last three rounds 12 to five rounds against somebody who's fighting you 13 in that weight takes stamina. They have to be in 14 shape. They have to be in better shape than I 15 am. 16 Q. In order to be a top-level MMA fighter the 17 athlete must be willing to risk serious injury or 18 death in the ring, correct? 19 MR. WIDNELL: Objection, form. 20 BY THE WITNESS: 21 A. Well, I don't think -- what does it mean 22 to risk death? I mean, people die in boxing. I 23 don't know if anybody's ever died in mixed martial 24 arts. I know it's regulated. So it's not going to 25 be extraordinarily risky, but you can get hurt in</p>	<p style="text-align: right;">490</p> <p>1 A. My understanding is that Pride was a 2 ongoing enterprise in the Asian MMA market. So 3 they acquired Pride and along with it the contracts 4 of various athletes who are under contract to Pride 5 and also Pride management, although my recollection 6 is that didn't last long. 7 Q. After Zuffa's acquisition of Pride it's 8 fair to say that Zuffa shut Pride down, correct? 9 MR. WIDNELL: Objection, form. 10 BY MR. CRAMER: 11 Q. It stopped running an MMA promotion under 12 the logo Pride, correct? 13 MR. WIDNELL: Objection, form. 14 BY THE WITNESS: 15 A. Well, I don't know what it means to be -- 16 shut down would be to remove their assets from the 17 market and by the same -- in the same way that when 18 my consulting business was sold they kept the name 19 for a little while and then they folded us in under 20 the other brand name, but our assets and human 21 capital were still in the market. 22 Q. You refer in the next sentence in 23 paragraph 304 "Without a noncompete with 24 Sakakibara" -- S-A-K-A-K-I-B-A-R-A -- "nothing 25 would prevent him from using his local connections,</p>
<p style="text-align: right;">489</p> <p>1 there and there are fights that I've watched people 2 get hurt. 3 Q. And in order to be a top-level MMA fighter 4 you would need to be willing to risk serious injury 5 while fighting, correct? 6 MR. WIDNELL: Same objection. 7 BY THE WITNESS: 8 A. That's true in any sport, but keep 9 going. 10 Q. You think it's more true in tennis that an 11 athlete will get seriously injured or mixed martial 12 arts, which one? 13 A. Probably in mixed martial arts. 14 Q. Turn to paragraph 304, please. In 15 paragraph 304 you're talking about Zuffa's 16 acquisition of Pride, among other things, and in 17 the second -- in the third sentence you say "More 18 importantly, the Pride acquisition was intended as 19 a way for Zuffa to enter into the Asian MMA 20 market"; do you see that? 21 A. Yes. 22 Q. In what way did Zuffa's purchase of Pride 23 assist Zuffa in entering the Asian MMA market? 24 MR. WIDNELL: Objection, form. 25 BY THE WITNESS:</p>	<p style="text-align: right;">491</p> <p>1 including his alleged connections to Japanese 2 organized crime and Pride trade secrets, to 3 immediately start a new promotion in Jab- -- in 4 Japan, thereby undercutting Zuffa's 5 47-million-dollar purchase of Pride and intended 6 investment in the Japanese MMA market"; do you see 7 that? 8 A. Yes. 9 Q. What benefit are local connections to an 10 MMA promotion? 11 A. They understood the Japanese market, and 12 my understanding is that when -- different markets 13 have different -- value different attributes of the 14 way the organization is run, value different 15 attributes of the athletes and the way the athletes 16 comport themselves. So it would be good to know 17 what works and it would also be good to know one's 18 way around the market there and what connections 19 have been made. So you're buying -- you're buying 20 not just the human capital of athletes, but 21 you're -- you're buying all the IP of the 22 organization in question. 23 Q. Are you aware -- so the UFC bought Pride 24 in 2007; is that right? 25 A. I think that's the year, but I don't</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">492</p> <p>1 remember.</p> <p>2 Q. So if the UFC -- are you aware about</p> <p>3 whether the UFC put on an event in Japan between</p> <p>4 2007 and 2012?</p> <p>5 A. I don't recall.</p> <p>6 Q. Would it surprise you to learn that after</p> <p>7 the acquisition of Pride in 2007, which you say was</p> <p>8 an effort to enter into the Asian MMA market, that</p> <p>9 Zuffa did not put on an MMA event in Asia until</p> <p>10 February of 2012?</p> <p>11 MR. WIDNELL: Objection to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Doesn't surprise me because this</p> <p>14 investment didn't turn out so well, especially when</p> <p>15 the connection with management to the Yakuza became</p> <p>16 evident.</p> <p>17 Q. You mean that Zuffa did not know before it</p> <p>18 paid \$47 million to the owners of Pride that Pride</p> <p>19 had a relationship with organized crime in Japan?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I don't know whether they had knowledge of</p> <p>23 it, but it didn't play out the way they had</p> <p>24 anticipated.</p> <p>25 Q. Well, wasn't it notorious that Pride's</p>	<p style="text-align: right;">494</p> <p>1 Asia. My understanding is they've tried to run</p> <p>2 things in Europe. How successful they've been I</p> <p>3 don't know.</p> <p>4 Q. Turn to paragraph 96, please.</p> <p>5 A. Yes.</p> <p>6 Q. In the last sentence on -- of paragraph 96</p> <p>7 on page 42 that begins "In this regard"; do you see</p> <p>8 that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. You write "In this regard it is noteworthy</p> <p>11 that in Asia, which is one of the other geographic</p> <p>12 market for MMA identified by Dr. Singer, he cites</p> <p>13 one championship's claim that it has a 90 percent</p> <p>14 market share"; do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Why is that noteworthy?</p> <p>17 A. Well, one has a 90 percent market share,</p> <p>18 it's not as if nobody can compete against --</p> <p>19 against Zuffa and Zuffa's actually tried to compete</p> <p>20 in that marketplace and hasn't been so</p> <p>21 successful.</p> <p>22 Q. The 90 percent figure is of the Asian MMA</p> <p>23 market; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. All right. You can put that aside.</p>
<p style="text-align: right;">493</p> <p>1 owners had a relationship with organized crime in</p> <p>2 Japan?</p> <p>3 MR. WIDNELL: Objection, form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Well, I say here "Nothing would prevent</p> <p>6 him from using his local connections, including his</p> <p>7 alleged connections to Japanese organized crime."</p> <p>8 So somebody had some suspicions and how those</p> <p>9 played out I don't know, but I know that management</p> <p>10 had to be replaced.</p> <p>11 Q. Turn to paragraph 60, please.</p> <p>12 A. Yes.</p> <p>13 Q. The third sentence -- or the sentence</p> <p>14 beginning "One of Zuffa's key business</p> <p>15 initiatives"; do you see that? Starts about midway</p> <p>16 through the paragraph.</p> <p>17 A. Yes.</p> <p>18 Q. It says "One of Zuffa's key business</p> <p>19 initiatives was an expansion of its events to</p> <p>20 include international offerings and for developing</p> <p>21 new markets for MMA outside the United States"; do</p> <p>22 you see that?</p> <p>23 A. Yep, that was one of their initiatives.</p> <p>24 Q. What new markets?</p> <p>25 A. Well, they tried to run some stuff in</p>	<p style="text-align: right;">495</p> <p>1 MR. WIDNELL: When you say put that aside,</p> <p>2 you mean the report?</p> <p>3 MR. CRAMER: Oh, no. I still have more</p> <p>4 from the report.</p> <p>5 THE WITNESS: Darn. I was putting it</p> <p>6 aside.</p> <p>7 MR. CRAMER: Yeah. Yeah.</p> <p>8 MR. WIDNELL: That was cruel.</p> <p>9 BY MR. CRAMER:</p> <p>10 Q. Well, before I go back to the report --</p> <p>11 turn to paragraph 201. In the first two sentences</p> <p>12 you say "In his regression assessing common impact</p> <p>13 Dr. Singer only considers the impact of the</p> <p>14 contractual restrictions in PAR contracts that he</p> <p>15 claims extend the period of exclusivity when an</p> <p>16 athlete is under contract to Zuffa. Similarly,</p> <p>17 when computing damages using his foreclosure</p> <p>18 regression benchmark, Dr. Singer only estimates the</p> <p>19 harm due to the alleged foreclosure provisions."</p> <p>20 What do you mean by that?</p> <p>21 A. I mean you have a list of challenged</p> <p>22 conduct and not all of it goes into the calculation</p> <p>23 of his -- his foreclosure shares. You know, you</p> <p>24 have to put all of the alleged conduct in front of</p> <p>25 me because it's late in the day.</p>

ROBERT TOPEL, VOL. II - HIGHLY CONFIDENTIAL

<p style="text-align: right;">496</p> <p>1 Q. Well, you list some of them in the next 2 sentence. 3 A. Yeah. 4 Q. There's the horizontal acquisitions, the 5 counter programming; do you see that? 6 A. Yeah. 7 Q. And what you're saying is that the -- at 8 best the foreclosure analysis only considers the 9 impact from the challenged -- contractual 10 restrictions in the par contracts; is that right? 11 A. Yeah. 12 Q. All right. You can put that aside for a 13 minute. 14 Who's Joe Silva? 15 A. Isn't Joe Silva the -- 16 Q. Well, I'll refresh your recollection. 17 Turn to paragraph 61. 18 A. Yeah. There are actually two people in 19 this case with the last name of Silva. 20 Q. That's true. There's a fighter. Turn to 21 paragraph -- 22 A. What page? 23 Q. Paragraph 61, footnote 9 -- 94. 24 A. Paragraph 61, footnote 94. 25 Q. Right. In footnote 94 you cite the</p>	<p style="text-align: right;">498</p> <p>1 Zuffa. 2 THE REPORTER: One at a time, please. 3 BY MR. CRAMER: 4 Q. Let me ask the question again. Thank you. 5 Are you aware that Mr. Silva, Joe Silva worked for 6 the UFC prior to Zuffa's acquisition of the UFC? 7 A. I think I agreed to that. 8 Q. Okay. All right. And in paragraph 61 you 9 are citing Joe Silva as an authority about the 10 types of athletes necessary to run a successful MMA 11 promotion; is that fair? 12 MR. WIDNELL: Objection, form. 13 BY THE WITNESS: 14 A. It's more about a process of identifying 15 those athletes. 16 Q. And you believe he's a knowledgeable 17 resource on that topic? 18 A. He's a participant. 19 Q. And do you believe he's a reliable source 20 regarding the quality of MMA talent? 21 A. He's reliable for -- 22 MR. WIDNELL: Objection, form. 23 BY THE WITNESS: 24 A. -- for the purposes that I used here. 25 Q. And one of the purposes for which you used</p>
<p style="text-align: right;">497</p> <p>1 deposition of Joe Silva, right? 2 A. Yes. 3 Q. Does it refresh your recollection that he 4 was the matchmaker for Zuffa? 5 A. Yes, it does. 6 Q. Does it sound right that he worked for 7 Zuffa from about 2001 to 2016? 8 A. That's familiar, but if you asked me to 9 verify that those are the dates, don't do that. 10 Q. Okay. Are you aware that he also 11 negotiated fighter contracts with some of the 12 fighters? 13 A. Yes. 14 Q. Are you aware that he worked for Zuffa 15 prior to the -- worked for the UFC prior to the 16 UFC's acquisition of Zuffa? 17 A. So he was carried over as an element of 18 management. 19 Q. Yes. 20 A. Yes. 21 MR. WIDNELL: I'm sorry. You mean prior 22 to Zuffa's acquisition of UFC? 23 MR. CRAMER: Yes. 24 THE WITNESS: Isn't that what he said? 25 MR. WIDNELL: He said UFC acquisition of</p>	<p style="text-align: right;">499</p> <p>1 him here was what it takes to successfully run an 2 MMA promotion; is that right? 3 A. Yes. 4 Q. Turn to paragraph 76, please. In footnote 5 129 you'll see that you -- here again is the 6 deposition of Joe Silva, you cite him again; is 7 that right? 8 A. Yes. 9 Q. And you cite him here when discussing 10 Zuffa's competition for what you call, 11 quote/unquote, named fighters; is that right? 12 MR. WIDNELL: I'm sorry. What are you 13 referring to? 14 BY MR. CRAMER: 15 Q. The last sentence of paragraph 76 says 16 "Since Zuffa's inception it has been outbid for 17 what Joe Silva called 'named fighters' by other MMA 18 promotions"; do you see that? 19 A. Yes. Excuse me. 20 Q. And you cite Mr. Silva's deposition for 21 that proposition; is that right? 22 A. Yes. 23 Q. Would you agree that Mr. Silva's a 24 reliable source regarding MMA fighter talent 25 acquisition?</p>